

BEFORE THE DEPARTMENT OF PUBLIC  
HEALTH AND HUMAN SERVICES OF THE  
STATE OF MONTANA

In the matter of the adoption	)	NOTICE OF PUBLIC
of Rules I through XXIX and	)	HEARING ON PROPOSED
amendment of ARM 37.95.102,	)	ADOPTION, AMENDMENT,
37.95.106, 37.95.108,	)	AND REPEAL
37.95.121, 37.95.132,	)	
37.95.139, 37.95.140,	)	
37.95.141, 37.95.214,	)	
37.95.215, 37.95.225,	)	
37.95.602, 37.95.610,	)	
37.95.611, 37.95.613,	)	
37.95.702, 37.95.705,	)	
37.95.706, 37.95.708 and	)	
37.95.1005 and the repeal of	)	
ARM 37.95.109, 37.95.618,	)	
37.95.620, 37.95.701, and	)	
37.95.907	)	
pertaining to licensure of	)	
day care facilities	)	

TO: All Interested Persons

1. On January 12, 2006, at 1:30 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption, amendment and repeal of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on January 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; Email dphhslegal@mt.gov.

2. The rules as proposed to be adopted provide as follows:

RULE I DAY CARE FACILITIES: LICENSE OR REGISTRATION RENEWAL PROCEDURES (1) A licensed or registered day care provider will be sent notification at least 90 days prior to the expiration of the current license/registration certificate.

(a) The notice shall advise the provider that the current license/registration is expiring and shall inform the provider how to access the information needed to renew the certificate.

(b) the notice will also provide information on where and when to submit renewal information and will explain the

consequences for late or incomplete submission of renewal materials.

(c) The provider and all staff must complete required training hours, including training in first aid and CPR, and the provider must submit proof that the training was completed prior to the date the day care certificate expires.

(d) If a complete renewal application is received on or before the current certificate expiration date, a "regular renewal certificate" will be issued and no break in the certificate date span will occur.

(e) If a renewal application is received before the current certificate expiration date but is incomplete, the department will identify to the provider, in writing, what items are missing. If those missing items are received before the certificate expiration date, there shall be no break in the certificate date span.

(2) If a provider is unable to fulfill all aspects of the renewal process due to circumstances beyond the provider's control such as a personal crisis involving the death of an immediate family member, a major medical emergency, or other good cause shown, the department may grant the provider a three month "provisional" registration. All licensing requirements for renewal must be completed by the end of the provisional period or the license will lapse. If all required materials are submitted within the three month period, the license will be reactivated as a regular renewal certificate.

(3) A "delayed registration" will be granted if a provider submits a renewal application which is received by the department prior to the expiration date of the current certificate, but the application is incomplete due to one or both of the following factors:

(a) events such as required provider or staff training or CPR classes are scheduled close to the expiration date of the license certificate and the department does not receive verification that the provider or staff have completed the required training until after the certificate expiration date; or

(b) a required event that is scheduled to occur before expiration of the license is cancelled at no fault of the provider and the event must be rescheduled after the expiration of the license certification.

(4) When a complete renewal packet is received after the expiration date, a regular registration will be issued effective the date the packet was submitted to the department, unless the department has another basis for taking negative licensing action and the license is or has been summarily suspended by the department pursuant to 2-4-631(3), MCA. The license will be deemed to have lapsed on the date of expiration.

(a) When a renewal packet is received after the expiration date and is incomplete, the department will notify the provider of what items must still be submitted to the department and a break in the certificate date span will occur until those missing items are submitted. The issuance date of the certificate will be the date the last requested item is received

by the department.

(b) When a certificate has lapsed for 60 or more days, it will be deemed to have automatically terminated.

(5) Any provider whose license or registration is deemed terminated based upon failure to complete the renewal process within the timelines provided in this rule may be relicensed by filing a new license or registration application and meeting all initial licensure requirements.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-721, 52-2-722, and 52-2-725, MCA

RULE II DAY CARE FACILITIES: STAFF RECORDS (1) The provider shall maintain written records regarding each caregiver which include:

(a) a record of training and experience;

(b) results of a criminal and protective services background check;

(c) personal statement of health and verification of CPR and first aid; and

(d) immunization records that establish compliance with ARM 37.95.140.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-732, MCA

RULE III DAY CARE FACILITIES: MANDATED REPORTING OF SUSPECTED CHILD ABUSE AND NEGLECT (1) The director, assistant director or any staff member of the day care facility who has reason to suspect that any child is or has been abused or neglected is required to personally report the matter promptly to the department child abuse hotline at 1(866)820-5437. The day care provider or staff member shall make the report within 24 hours of receiving information concerning suspected child abuse or neglect.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 41-3-102, and 52-2-704, MCA

RULE IV DAY CARE CENTERS: CONFIDENTIALITY REQUIREMENTS

(1) The provider and all staff and volunteers shall maintain personal information about the child and the child's family as confidential.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, and 52-2-723, MCA

RULE V GROUP AND FAMILY DAY CARE HOMES: PROVIDER RESPONSIBILITIES AND QUALIFICATIONS (1) The provider and all persons responsible for children in the day care home must:

(a) be at least 18 years of age;

(b) demonstrate they are physically, emotionally, and mentally capable of performing the essential function of their position with or without reasonable accommodations;

(c) be free of communicable disease;  
(d) have met the immunization requirements of ARM 37.95.140; and

(e) demonstrate they are of good moral character.

(2) The provider and all staff, including caregivers, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. Pursuant to ARM 37.95.109(8), the director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the caregiver providing care.

(3) The provider shall be responsible for the direct care, protection, supervision, and guidance of the children through active involvement or observation in group and family day care facilities.

(4) The provider shall attend a basic day care orientation or its equivalent provided or approved by the department within the first 60 days of certification. This orientation must include the following areas:

- (a) health;
- (b) safety;
- (c) child development/well being;
- (d) discipline/guidance;
- (e) nutrition/food safety; or
- (f) business aspects of a child care business.

(5) Orientation training does not count toward the required eight hours of continuing education as specified in (6).

(6) The provider and all caregivers must annually verify that they have met the training requirements set out in [Rule VIII].

(7) The provider must hold current course completion cards in CPR for infant, child and adult CPR; infant choking response; and standard first aid (1st aid). Course completion means direct instruction which includes the practice and demonstrated applications of CPR methods as taught by instructors from accredited entities.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE VI DAY CARE FACILITIES: CRIMINAL BACKGROUND CHECKS (1) A satisfactory criminal background, motor vehicle, and child and adult protective services check is required for each day care provider, on all staff, including caregiver, administrative staff, aides, volunteers, kitchen and custodial staff, and all persons over the age of 18 residing in the day care facility or who stays in the day care facility regularly or

frequently.

(2) If the provider, staff member, volunteer, or resident has always lived in Montana, a Montana based criminal background check will be conducted based upon a name based criminal records check.

(3) If the provider, staff member, volunteer, resident of the facility, or any person who regularly or frequently stays in the facility, has lived outside of Montana for any portion of the previous five years, that person must submit a completed fingerprint card so that a fingerprint based criminal records check can be requested.

(4) If an applicant has lived in states other than Montana, a check will be made of the violent offender and criminal history registries if this information is available for states in which the applicant has lived.

(5) If after 45 days, the department has been unable to obtain results of a criminal records check for an applicant who has lived in Montana for at least five years, the applicant must sign an affidavit attesting to his lack of criminal history or to the details of existing criminal history. The affidavit will be accepted in lieu of receipt of results from a criminal history check.

(6) An applicant who has not lived in Montana for at least five years cannot be licensed without receipt of results of a criminal records check from every state in which the applicant has lived since the age of 18.

(7) An annual name based criminal records check for all providers, all staff, including caregivers, administrative staff, aides, volunteers, kitchen and custodial staff, and persons residing in the day care facility, is required for relicensure.

(8) Persons formerly licensed as day care providers will be treated as new applicants if the former provider has not been licensed for a period of more than one year or if the provider has lived out-of-state for any period of time since being licensed in Montana.

(9) A name based check for criminal records will be used for applicants who have lived in Montana since the expiration of their previous license or registration if it has been less than one year since the expiration of the license.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE VII DAY CARE FACILITIES: COOPERATION WITH THE DEPARTMENT AND DEPARTMENT ACCESS (1) An authorized representative of the department may inspect a facility and associated property without prior notice to the owner or staff of the facility whenever the department considers it necessary and any time children are in care.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-732, and 52-2-733, MCA

RULE VIII DAY CARE FACILITIES: REQUIRED ANNUAL TRAINING

(1) The provider and all caregivers at any day care facility must each verify that they have successfully completed a minimum of at least eight hours of continuing education annually, unless otherwise specified in these rules, within the 12 months prior to license/registration expiration or the license/registration anniversary date.

(2) The training may be obtained from the department or other department approved professional child care education and development programs offered by national, state, or local child care organizations, or through successful completion of college level course work in early childhood areas or child development.

(3) Continuing education must relate to the Montana early care and education knowledge base and must fall within the following categories:

- (a) personal attributes/characteristics;
- (b) health, safety, and nutrition which may include training on prevention of sudden infant death syndrome (SIDS) and medication administration;
- (c) child growth and development;
- (d) environmental design;
- (e) child guidance;
- (f) family and community partnerships;
- (g) program management;
- (h) curriculum;
- (i) observation and assessment;
- (j) professionalism; or
- (k) cultural and developmental diversity.

(4) With the exception of volunteers, any person who provides care to children in a day care facility for at least 160 hours a year is required to successfully complete eight hours of continuing education annually.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE IX DAY CARE FACILITIES: NEGATIVE LICENSING ACTION

(1) After written notice to the applicant, licensee, or registrant, the department shall deny, suspend, restrict, revoke, or reduce to a provisional or probationary status a registration certificate or license upon finding that:

(a) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a serious crime, such as but not limited to homicide, sexual intercourse without consent, sexual assault, aggravated assault, assault on a minor, assault on an officer, assault with a weapon, kidnapping, aggravated kidnapping, prostitution, robbery, or burglary;

(b) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household or any person staying in the facility on a regular or frequent basis has a conviction for a crime pertaining to children or families, including but not limited to child abuse or neglect, incest,

child sexual abuse, ritual abuse of a minor, felony partner or family member assault, child pornography, child prostitution, internet crimes involving children, felony endangering the welfare of a child, felony unlawful transactions with children, or aggravated interference with parent-child contact;

(c) the applicant, licensee, or registrant or a member of the applicant's, licensee's, or registrant's household has within the previous five years had a felony conviction for a drug related offense, including but not limited to use, distribution, or possession of controlled substances, criminal possession of precursors to dangerous drugs, criminal manufacture of dangerous drugs, criminal possession of imitation dangerous drugs with the purpose to distribute, criminal possession, manufacture or delivery of drug paraphernalia, or driving under the influence of alcohol or other drugs;

(d) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability.

(2) The department, after written notice to the applicant, licensee, or registrant may deny, suspend, or revoke a registration certificate license or registration certification or may restrict or reduce to a provisional, or probationary status a registration certificate license or registration certification upon a finding that:

(a) the applicant, licensee, registrant, or a member of the applicant's, licensee's, or registrant's household, or anyone staying in the facility on a frequent or regular basis has a conviction for misdemeanor partner/family member assault, misdemeanor endangering the welfare of a child, misdemeanor unlawful transaction with children, or a crime involving an abuse of the public trust;

(b) the day care is not in compliance with fire safety standards imposed by these rules, or by the state fire marshal or other authority having jurisdiction;

(c) the day care has not met or is no longer meeting the requirements for licensure or registration set forth in these rules;

(d) the provider has made any material misrepresentations to the department, either negligent or intentional, including an omission of information the provider is obligated to disclose to the department, regarding any aspect of the day care or its operations;

(e) the provider, any staff member, volunteer, or any person residing in the day care or anyone staying in the facility on a frequent or regular basis has been named as the perpetrator in a substantiated report of abuse or neglect;

(f) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation by the department, or by a law enforcement agency determines that there is probable cause to believe that a child in the facility may be in danger of harm;

(g) the provider or any staff member has failed to report an incident of suspected abuse or neglect of any child to the department as required by 41-3-201, MCA, within 24 hours of receiving information pertaining to the incident;

(h) the results of a psychological or medical examination provided reasonable grounds for the department to believe that the provider, any staff member, or volunteer in the day care is not an appropriate caretaker for a child;

(i) the provider, any staff member, or any volunteer, may pose any risk or threat to the safety or welfare of a child in the day care;

(j) the day care has failed to protect the health, welfare, or safety of a child, or the day care presents a reasonably foreseeable serious hazard to the health, safety, or welfare of a child;

(k) a director, caregiver, volunteer, or adult residing in the facility or staying in the facility on a regular or frequent basis has violated a licensing regulation which resulted in harm to a child as defined in 41-3-102, MCA or knowingly allowed harm to occur to a child as defined in 41-3-102, MCA, whether or not that person was prosecuted or convicted of child abuse or neglect; or

(l) a day care license or registration may be suspended, restricted, or revoked at the discretion of the department if the licensee's child is removed from the licensee by the department.

(3) Suspension or revocation may be immediate upon a determination by the department that public health, safety, or welfare imperatively requires emergency action. Such a determination may be based on findings including, but not limited to the following situations:

(a) upon referral of suspected child abuse or neglect regarding an operating day care facility, the initial investigation reveals that there are reasonable grounds to believe that a child in the facility may be in danger of harm;

(b) the department requests and is denied access to the licensed or registered facility;

(c) the provider has made any material misrepresentation to the department, either negligently or intentionally, regarding any information requested on the application form or necessary for registration or licensing purposes;

(d) the provider, a member of the provider's household, or staff has been named as the perpetrator in a substantiated report of child abuse or neglect as defined in ARM 37.95.1016; or

(e) through a child care licensing investigation, it is determined that the provider, provider's staff, or member of the provider's household has violated a licensing regulation that has resulted in harm to a child which falls within the definitions of child abuse and neglect set out in 41-3-102, MCA, whether or not a criminal prosecution is initiated.

(4) If a licensee is placed on a probationary or other provisional status, the department may notify all parents and guardians of all children attending the facility of the status



of the license, the basis for the reduced status and the time period for which the license is reduced. The department may do so by personal notice, by written notice, or by posting notice on the day care license, which is required to be posted in plain view at the facility.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-726, and 52-2-731, MCA

RULE X DAY CARE CENTERS: CHILD TO STAFF RATIOS (1) The child to staff ratio for a day care center is:

- (a) 4:1 for infants zero months through 23 months;
- (b) 8:1 for children two years through three years;
- (c) 10:1 for children four years through five years; and
- (d) 14:1 for six years and over.

(2) For day care center programs providing care exclusively to school aged children, the child to staff ratio is 14:2 for the first 28 children, with a ratio of 14:1 to be maintained for numbers in excess of 28.

(3) Only the provider, primary caregivers and aides may be counted as staff in determining the staff ratio.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-703, 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XI DAY CARE FACILITIES: RECORDS (1) The provider shall maintain all policies, records, and reports that are required by the department. These policies must be reviewed and updated annually by the facility.

(2) The department must be given access to all records and an opportunity to copy the records whenever children are in care.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, and 52-2-732, MCA

RULE XII DAY CARE FACILITIES: LICENSE OR REGISTRATION NOT TRANSFERABLE (1) The registration certificate or license is not transferable to another operator or site.

(2) A license or registration is valid only for the person and premises for which it was issued. A license or registration may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of the facility, the license or registration certificate must be physically returned to the department.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XIII DAY CARE FACILITIES: NOTICE OF CHANGES (1) The department must be notified of any changes, including changes in staff, changes in the category of children in day care, or changes to the day care property, that would affect the terms of the registration or licensure.

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XIV DAY CARE FACILITIES: LICENSE FOR EACH PREMISES (1) Separate registration certificates and licenses shall be required for programs maintained on separate premises, even when operated by the same provider.

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-704, and 52-2-721, MCA

RULE XV DAY CARE FACILITIES: LICENSE OR REGISTRATION CERTIFICATE TO BE POSTED (1) Each day care facility must post its license in plain view where it is readily viewable by parents dropping off or picking up children.

AUTH: Sec. 52-2-704, MCA  
IMP: Sec. 52-2-703, 52-2-704, and 52-2-721, MCA

RULE XVI DAY CARE CENTERS: STAFFING QUALIFICATIONS

(1) All providers, staff members, and volunteers at a day care center must be:

(a) able to demonstrate they are physically, emotionally, and mentally capable of performing the essential functions of the position with or without reasonable accommodations;

(b) free of communicable disease;

(c) immunized in compliance with ARM 37.95.140; and

(d) able to demonstrate they are of good moral character.

(2) Each day care center must have an on site director who can be either a teaching or nonteaching director.

(3) Any on site teaching director newly employed at any day care center on or after the effective date of this rule shall have:

(a) a current child development associate (CDA) credential; or

(b) child care development specialist (CCDS) apprenticeship certificate; or

(c) an associate's or bachelor's degree in early childhood education/child development; or

(d) a degree in education or social science with at least 20 credits in early childhood education/child development; or

(e) an associate's or bachelor's degree in an unrelated field with at least 20 semester credits in early childhood education/child development and 1000 hours of documented experience in an early childhood program, such as a day care center, a family or group day care home, head start, or another recognized preschool program.

(4) An administrative nonteaching director newly employed at any day care center on or after the effective date of the rule must have an associate's or bachelor's degree in accounting, business administration, finance, human service/public administration, or a similar field; and

(a) 4000 hours (two years) of experience working in an early childhood program such as a day care center, a family or

group day care home, head start, or recognized preschool program; or

(b) the director must be employed in a day care center that also employs an education coordinator/program director who qualifies as a primary caregiver and who oversees curriculum and program components.

(5) A center director, newly employed at any day care center on or after the effective date of these rules, whether teaching or nonteaching, must qualify for a level three or higher on the Montana early care and education career path and must obtain 15 hours of approved training on an annual basis.

(6) A primary caregiver must:

(a) be at least 18 years of age;

(b) have sufficient language skills to communicate with children and adults;

(c) have at least one day of on the job orientation; and

(d) receive a minimum of at least eight hours of documented continuing education annually as provided in [Rule VIII]; and

(e) have the following training and experience:

(i) two years of experience in an early childhood program such as a day care center, a family or group day care home, headstart, early headstart, or another recognized preschool program; or

(ii) child development associate credential; or

(iii) a bachelor of arts or an associate degree in education or a related field;

(f) hold a current course completion card in infant, child and adult CPR and infant choking response; and

(g) be currently certified in standard first aid.

(7) Course completion as indicated in (6)(f) means direct instruction, which includes the practical and demonstrated applications of CPR methods as taught by instructors from accredited entities.

(8) An aide must be directly supervised by a primary caregiver and shall be at least 16 years of age and must:

(a) have sufficient language skills to communicate with children and adults; and

(b) have at least one day of on-the-job orientation; and

(c) successfully complete a minimum of at least eight hours of documented continuing education annually as required in [Rule VIII].

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XVII DAY CARE FACILITIES: SCHOOL AGED CARE (1) A day care center that exclusively provides care to school aged children must meet all licensing requirements for a regular day care center license except where specifically exempted and must meet all additional requirements set in these rules for a program exclusively providing care to school aged children.

(2) School based day care programs serving children in kindergarten through grade six do not need a separate inspection

if the area being used for day care has met the school safety requirements for disaster drills, notification to the local fire department and inspection of exits set out in 20-1-401 through 20-1-407, MCA.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XVIII DAY CARE FACILITIES: MEDICATION ADMINISTRATION

(1) No day care employee, owner, or operator may administer any medication to a child without the written authorization of the parents including the child's name, date or dates for which the authorization is applicable, dosage instructions, and the signature of the child's parent or guardian.

(2) If an emergency arises and the parents or guardian of the child is unavailable, an employee, owner, or operator may administer medicine to a child if:

(a) a medical practitioner provides a written authorization containing the child's name, date or dates for which the authorization is applicable, dosage instructions, and the medical provider's signature; or

(b) a medical practitioner, emergency service provider, or 911 responder verbally directs the employee, owner, or operator of the day care facility to immediately administer a medicine to the child, in which case the child must then be transported to a health care facility or a medical practitioner for follow up care within a reasonable time by the child's parent or guardian or by an employee, owner, or operator of the day care facility.

(3) An employee, owner, or operator of a day care facility may not give medication to a child in a manner that is inconsistent with the container instructions on dosage or frequency unless directed to do so by a medical provider as provided in 52-2-736, MCA.

(4) If the provider/facility elects to administer medication to children, the provider/facility must maintain the following documentation on site:

(a) A medication record which includes:

(i) the written authorization of the parents for the caregiver to administer medication;

(ii) the prescription by a health care provider if required; and

(iii) a medication administration log.

(b) A written medication administration policy which includes at a minimum:

(i) types of medication which may be administered; and

(ii) medication administration procedures to be followed, including the route of medication administration, the amount of medication given, and the times when medication is to be administered; and

(c) A health care and medication plan for children who may have special health care needs or those requiring medication for chronic health conditions which has been approved by a health care provider licensed in Montana.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, 52-2-732, 52-2-733, and 52-2-736, MCA

RULE XIX DAY CARE FACILITIES: STORAGE AND ADMINISTRATION OF MEDICATION (1) Any prescription medication brought into the facility by the parent, legal guardian, or responsible relative of a child shall be dated and shall be kept in the original container labeled by a pharmacist with the following information:

- (a) child's first and last names;
- (b) the date the prescription was filled;
- (c) the name of the health care provider who wrote the prescription; and
- (d) the medication's expiration date, and specific legible instructions for administration, storage, and disposal (i.e., the manufacturer's instruction or prescription label).

(2) Any nonprescription medication brought into the facility for use by a specific child shall be labeled with the following information:

- (a) the date;
- (b) the child's first and last names;
- (c) specific, legible instructions for administration and storage (i.e., the manufacturer's instructions); and
- (d) the name of the health care provider, parent, or guardian who made the recommendation.

(3) All medications, refrigerated or unrefrigerated, shall:

- (a) have child-protective caps;
- (b) be kept in an orderly fashion;
- (c) be stored away from food at the proper temperatures; and

(d) kept in a location inaccessible to children or kept in a locked box.

(4) Medication shall not be used beyond the date of expiration.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, and 52-2-732, MCA

RULE XX DAY CARE CENTERS, SCHOOL AGED CARE: DIRECTOR AND STAFF QUALIFICATIONS (1) All staff providers, members, and volunteers at a day care center that exclusively serves school aged children must be:

- (a) mentally, emotionally, and physically capable of performing the essential functions of the position with or without reasonable accommodations;
- (b) free from communicable disease;
- (c) immunized in compliance with ARM 37.95.140; and
- (d) of good moral character.

(2) The provider and all staff, including caregivers, aides, volunteers, kitchen and custodial staff, and all persons residing in the day care facility or staying in the facility on a regular or frequent basis, must obtain a completed criminal

background check, a completed child protective services check, and a statement of health. For those persons who are considered caregivers, this information must be completed before providing direct unsupervised care to the children attending the day care facility. Pursuant to ARM 37.95.109(8), the director or provider/owner of the facility is responsible for ensuring these reports and other pertinent information are completed and submitted to the department within 15 actual days of the caregiver providing care.

(3) The minimum duties and qualifications for staff at a day care that exclusively serves school aged children are as follows:

(a) Each center must have a program director who is responsible for the overall management and direction of the program.

(b) The program director must:

(i) be 21 years of age or older; and

(ii) have obtained a bachelor's or associate's degree in early childhood education, child development, elementary or secondary education, or related field such as recreation, physical education, music, art, family and consumer science, psychology, or social services; and

(iii) be currently certified in child and adult CPR and first aid.

(c) Each day care center with a program that exclusively serves school aged children must have a site based director who is responsible for the on site daily operation of the program, including program planning and implementation and staff supervision. The site based director and program director may be the same person if that person meets all qualifications for both positions. A site based director must be present at the facility at all times it is operating.

(d) The site director must:

(i) have a minimum of two years of college education in a field related to early childhood education, child development, elementary or secondary education, music, art, family and consumer science, psychology, or social sciences, or be 21 years of age with two years of experience in an organized recreational or educational setting; and

(ii) have obtained an associate's degree in early childhood education/child development or, if a degree has not been obtained, the site director must have a minimum of five years of experience working directly with children, as evidenced by professional references, education, and on the job performance; and

(iii) have current certification in child and adult CPR and first aid.

(e) Other school aged child care staff include assistants and aides.

(f) Assistants:

(i) must be 18 years of age or older; and

(ii) possess a high school diploma or equivalent; and

(iii) have experience working with school aged children;

and

(iv) hold current certification in child and adult CPR and first aid, and must successfully complete two hours of school aged child growth and development training that must be completed before an assistant will be allowed to have sole responsibility for a group of children; and

(v) have sufficient language skills to communicate with school aged children and adults.

(g) Aides:

(i) must be 16 years of age or older; and

(ii) shall be under direct supervision of the site based director or program director; and

(iii) may not be assigned sole responsibility for any group of children; and

(vi) have sufficient language skills to communicate with school aged children and adults.

(4) Only the director, site coordinator, assistants, and aides of a school aged child care program may be counted in determining the child to staff ratio. Volunteers to the program may not be counted in the child to staff ratio.

(5) All approved directors and staff members must complete, on an annual basis, the hours of continuing education as outlined in [Rule VIII].

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXI DAY CARE CENTERS, SCHOOL AGED CARE: NOTICE OF CURRENT ADDRESS (1) The provider shall provide the department with any change in the provider's mailing address within 10 days of the change.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXII DAY CARE FACILITY: PROTECTION OF CHILDREN FROM A PERSON CHARGED WITH A CRIME INVOLVING CHILDREN, VIOLENCE, OR DRUGS (1) A caregiver, volunteer, support staff person, other adult residing in the day care facility, or other person who regularly or frequently stays in the facility, who is charged with a crime involving children, physical or sexual violence against any person, or any felony drug related offense, or awaiting trial may not provide care or be present in the facility pending the outcome of the trial.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXIII DAY CARE FACILITIES: NO THREAT FROM PERSONS IN CONTACT WITH CHILDREN (1) No staff member, aide, volunteer, or other person having direct contact with the children in the facility shall pose any potential threat to the health, safety, and well being of the children in care.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXIV DAY CARE FACILITIES: REQUIRING EXAMINATIONS

(1) The department may require an applicant, a provider, a staff person, a volunteer, or any person living in the day care facility or staying in the day care facility on a regular or frequent basis, to undergo a physical, psychological, psychiatric, or chemical dependency evaluation if the department determines such an evaluation is relevant to the department's reasonable belief that the person has engaged in behaviors that may place children or other adults at risk of harm.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXV DAY CARE FACILITIES: SUPERVISION AT ALL TIMES

(1) Caregivers must supervise children at all times.

(2) The provider and all caregivers shall be responsible for direct care, protection, supervision, and guidance of children through active involvement or direct observation.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXVI DAY CARE FACILITIES: REAPPLICATION AFTER SUSPENSION OF REVOCATION (1) However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within one year of the denial or revocation.

(2) If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until one year after the date of the decision of the hearing officer.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXVII DAY CARE FACILITIES: HEALTH HABITS (1) Good health habits, such as washing hands, must be taught during everyday activities. The caregivers must ensure that each child washes his hands:

\_\_\_\_\_ (a) upon arriving at the facility;  
(b) before eating;  
(c) before participating in food preparation activities;  
and

(d) after using the toilet.

(2) Every employee, volunteer, or resident at a day care facility must:

(a) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101°F or greater, or if the person exhibits any of the symptoms outlined in (4) for which a child would be excluded;



(b) wash their hands and exposed portions of their arms with a cleaning compound in a sink by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clear water, paying particular attention to the areas underneath the fingernails and between the fingers, at the following times:

(i) after touching bare human body parts other than clean hands and clean exposed portions of arms;

(ii) after using the toilet;

(iii) after every diapering;

(iv) after coughing, sneezing, or using a handkerchief or disposable tissue;

(v) immediately before engaging in food preparation and before feeding any child;

(vi) during food preparation as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; and

(vii) after engaging in other activities that contaminate the hands; and

(c) provide documentation of complete measles, mumps, and rubella immunizations and a tetanus and diphtheria booster within the 10 years prior to commencing work, volunteering, or residing at the day care facility.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

NEW RULE XXVIII DAY CARE FACILITIES: FIRST AID REQUIREMENTS (1) Each provider shall adopt and follow written policies for first aid consistent with recommendations from the American red cross. These policies must include but are not limited to:

\_\_\_\_(a) procedures for handling medical emergencies, including calling the emergency Montana poison control center at 1 (800) 222-1222 when a child is suspected of having ingested any poisonous or toxic substance; and

\_\_\_\_(b) directions for calling parents or someone else designated as responsible for the child when a child is sick or injured.

(2) A first aid kit must be kept on site at all times and must at a minimum contain:

(a) unexpired syrup of ipecac (one ounce bottle) which may be administered only upon directive from the emergency Montana poison control center or upon directive of the local emergency service program (i.e., 911 operator, local hospital, or physician);

(b) sterile, absorbent bandages;

(c) a cold pack;

(d) tape and a variety of band-aids;

(e) tweezers and scissors;

(f) the toll free number for the emergency Montana poison control center, 1 (800)222-1222;

(g) disposable single use gloves;

(h) the director, owner, manager, or person in charge of

the day care facility shall take appropriate precautions to minimize the risk of any child suffering sunburn and to minimize the risk of any child contracting west nile virus; and

(i) each day care provider is responsible for notifying the department of any hazard to the health, welfare, or safety of children in care.

(3) A portable first aid kit containing at least the items listed in (2) must accompany staff and children on trips away from the facility.

(4) The provider shall submit a report to the appropriate local office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the children involved, and a copy retained on file at the day care facility.

(5) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

RULE XXIX DAY CARE FACILITIES: STAFF APPROVAL (1) The department shall not grant approval to any day care facility for any director, care giver, volunteer, or support staff person who has been convicted of a crime identified in [Rule IX(1)].

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

3. The rules as proposed to be amended provide as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.95.102 DEFINITIONS (1) "Aide" means a facility staff person who carries out assigned caregiving tasks under the direct supervision of a primary caregiver or director.

~~(1)~~ (2) "Caregiver" means a licensee, registrant, employee, aide, or volunteer who is responsible for the direct care and supervision of children in a day care facility.

(3) "CPR" means cardio-pulmonary resuscitation.

~~(2)~~ (4) "Day care" or "child care" means care for children provided by an adult, other than a parent of the children or other person living with the children as a parent, on a regular basis for daily periods of less than 24 hours, whether that care is for daytime or nighttime hours. In addition to the ~~previous~~ definitional language found at 52-2-703, MCA, the term also means care to a child up to the age of 13 years except as indicated otherwise in these rules. The term does not include care by a relative, unless registration or licensure as a day care facility is required to receive payments as provided in 52-

2-713, MCA.

~~(3)~~ (5) "Day care center" means an out-of-home place in which day care is provided to 13 or more children on a regular basis.

~~(4)~~ (6) "Day care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis, or a place licensed or registered to provide day care on an irregular basis for children suffering from illness. It includes a family day care home, a day care center, a group day care home, or a facility providing care in a child's home for the purpose of meeting registration requirements for the receipt of payments as provided in 52-2-713, MCA. The term does not include:

(a) a person who limits care to children who are related to the person by blood or marriage or under the person's legal guardianship, unless registration or licensure as a day care facility is required to receive payments as provided in 52-2-713, MCA; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are three years of age or older. In addition to the previous definitional language found at 52-2-703, MCA, the term also does not include a person caring for the children of a single family, or a person, not receiving any type of state payment for day care, who is caring for children in the children's own home. In addition to the children being cared for in their own home, there may be no more than two children from another home being cared for by the same provider.

(7) "Delayed renewal application" means a renewal application which is submitted to the department prior to the certificate expiration date, but is submitted in an incomplete manner, resulting in a delay in the issuance of the certificate.

~~(5)~~ (8) "Department" means the department of public health and human services provided for in 2-15-2201, MCA.

(9) "Director" means the person designated on the center application or otherwise by written notice to the department as the person responsible for the daily operation of a day care center. A director is also responsible for implementing appropriate child development principles and knowledge of family relationships in providing daily care to the children cared for in the facility.

~~(6)~~ (10) "DT vaccine" means a vaccine containing a combination of diphtheria and tetanus toxoids for pediatric use.

~~(7)~~ (11) "DTP vaccine" means a vaccine containing diphtheria and tetanus toxoids and pertussis (whooping cough) vaccine combined, including a vaccine referred to as DTaP, diphtheria, tetanus toxoid, and acellular pertussis vaccine combined.

~~(8)~~ (12) "Family day care home" means a private residence in which day care is provided to three to six children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to no more than three children under two years of age unless care is provided for infants only. For

facilities providing care only for infants, family day care home means a place in which supplemental parental care is provided for up to four infants. No other children shall be in attendance.

~~(9)~~ (13) "Group day care home" means a private residence or other structure in which day care is provided to seven to 12 children on a regular basis. In addition to the previous definitional language found at 52-2-703, MCA, the term also means a day care facility providing care to seven to 12 children with no more than six children under two years of age, unless care is provided for infants only. For facilities providing care only for infants, group day care home means a place in which supplemental parental care is provided for up to eight infants. No other children shall be in attendance.

(a) Facilities caring for infants shall maintain a staff/infant ratio of one caregiver for each four infants in attendance ~~unless precluded by other facility staffing requirements.~~

~~(10)~~ (14) "Harm to children" means harm to a child's health or welfare as defined in 41-3-102, MCA.

~~(11)~~ (15) "Health care provider" means a licensed physician, a physician assistant-certified, a nurse practitioner, a registered nurse, or a naturopathic physician practicing within the scope of the license.

~~(12)~~ (16) "Hib vaccine" means a vaccine immunizing against infection by Haemophilus influenza type B disease.

~~(13)~~ (17) "Infant" means a child under the age of 24 months of age.

(18) "Lapsed registration/license" means:

(a) an application for registration/licensing renewal which is received by the department after the registration/licensing expiration date;

(b) an application which is incomplete and results in a break-in-license span; or

(c) any break in the license/registration span resulting from a lapse of required insurance or resulting from a failure to comply with another licensure requirement.

~~(14)~~ (19) "License" means a written document issued by the department that the license holder has complied with the applicable standards and rules for day care centers.

~~(15)~~ (20) "Local health authority" means a local health officer, local department of health, or local board of health.

~~(16)~~ (21) "MMR vaccine" means a live virus vaccine containing a combination of measles, mumps, and rubella vaccine.

~~(17)~~ (22) "Night care" means care provided for a child between the hours of 7 p.m. and 7 a.m. during which the parent~~s~~ desires a child to sleep.

~~(18)~~ (23) "Overlap care" means care provided at a day care facility for children age three and older for the times before and after school and approved by the department for a designated period of time not to exceed three hours when the number of children in care may exceed the number of children registered for care on the registration certificate.

(24) "Nonprovider staff" means a staff person of a day

care facility who does not participate in a care giving role.

(25) "Nonprescription medication" means any over the counter medication that is not specifically prescribed by a physician, but is recommended by a health care provider or a parent or guardian for a specific child.

(26) "Nonteaching director" means a facility director who meets the requirements as outlined in [Rule XVI] but who does not regularly provide direct care to children who attend the day care facility.

(19) (27) "Physician" means a person licensed to practice medicine under Title 37, chapter 3, MCA.

(20) (29) "Preschooler" means a child between 36 months of age and the age the child will be when he or she initially enters a public or private school system.

(21) (28) "Portable wading pool" means a structure which contains water, and is used for aquatic activities, and is less than 24 inches high.

(30) "Prescription medication" means medication prescribed by a licensed health care provider for a specific person which may only be obtained through a pharmacy by prescription.

(31) "Primary caregiver" means a facility staff person who meets the requirements as outlined in [Rule XVI] and who regularly provides direct care to the children who attend the day care facility.

(32) "Probationary license" means a day care facility license or registration certificate whose status has been reduced for a specified period of time for a licensing violation and which will be reinstated to regular status upon successful completion of and compliance with remedial measures identified by the department to address specific deficiencies.

(22) (33) "Provider" means the applicant for license or registration, the licensee or registrant.

(23) (34) "Provisional certificate" means a registration or license status that is given to a day care provider, if the provider does not meet all the registration or license requirements but is attempting to comply. This status can be granted for a period of up to three months. A second three month certificate may be issued at the discretion of the day care licensing program manager.

(24) (35) "Public sewage system" means a system of collection, transportation, treatment, or disposal of sewage that is designed to serve or serves 15 or more families or 25 or more persons for a period of at least 60 days out of the calendar year.

(25) (36) "Public water supply system" means a system for the provision of water for human consumption from any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that is designed to serve or serves 15 or more families or 25 or more persons daily or has at least 15 service connections at least 60 days out of the calendar year.

(26) (37) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of Title 52, chapter 2, part 7, MCA.

~~(27)~~ (38) "Registration" means the process whereby the department maintains a record of all family day care homes and group day care homes, prescribes standards, promulgates rules, and requires the operator of a family day care home or a group day care home to certify compliance with the prescribed standards and promulgated rules.

~~(28)~~ (39) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department compliance with this rule and the applicable standards for family day care home and group day care homes.

~~(29)~~ (41) "Regular certificate" means a license status that is given upon determination that the day care provider is meeting all requirements set forth for family day care homes, ~~or~~ group day care homes, or day care centers.

~~(30)~~ (40) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within three or more consecutive weeks. In addition to the previous definitional language found at 52-2-703, MCA, the term also means the child must be in attendance four or more days a week for six hours a day or more.

~~(31)~~ (42) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(a) The term includes the status of a child described above in a step or adoptive relationship.

(43) "Remote means of egress" means escape routes in the day care which consist of two exits whose distance apart is equal to or greater than one half the diagonal distance of the space occupied to minimize the possibility that both exits will be blocked off by a fire or other emergency condition.

(44) "Renewal registration/license" means a registration or license certificate that has reached its expiration date and the holder of that registration/license desires to renew or continue operations allowed by the registration/license.

~~(32)~~ (45) "Restricted certificate" means a restricted license ~~/ or registration status given to a registrant/licensee assigned~~ when it has been determined that the provider is unable to meet certain specific requirement criteria, but the provider is participating in complying with an agreed upon plan of correction.

~~(33)~~ (46) "School-age child" means a person who is at least five years of age and who is younger than 13 years of age or a person with special needs, as defined by the department, who is under 18 years of age or is 18 years of age and a full time student expected to complete an educational program by 19 years of age.

(47) "School age child care facility" means a licensed day care center program operating in a facility other than a private residence that exclusively provides care for school aged children when public school is not in session.

(48) "Substitute" means any person not regularly employed by a child care facility who temporarily takes the place of an

approved staff person, other than the director.

~~(34)~~ (49) "Supervision" means the provider and all caregivers shall be able to see or hear the children at all times.

~~(35)~~ (50) "Supplemental parental care" means the provision of day care by an adult other than a parent, guardian, or person in loco parentis on a regular basis for daily periods of less than 24 hours.

(51) "Teaching director" means a person who meets the requirements outlined in [Rule XVI] and who regularly provides direct care to the children who attend the day care facility.

~~(36)~~ (52) "Toddler" means a child who is 24 months of age to 36 months of age.

~~(37)~~ (53) "Vaccine" means one of the following:

(a) if administered in the United States, an immunizing agent approved by the bureau of biologics, food and drug administration, United States public health services; or

(b) if administered outside the United States, an immunizing agent administered by a person licensed to practice medicine in the country where it is administered or by an agent of the principal public health agency of that country and properly documented as required by ARM 37.114.708.

(54) "Varicella" means an attenuated, live virus vaccine to prevent chicken pox disease.

~~(38)~~ (55) "Volunteer" means any person who enters into service voluntarily, but who when in service is subject to discipline and regulations like any other employee.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-702, 52-2-703, 52-2-704, 52-2-713, 52-2-723, 52-2-725, 52-2-731, 52-2-735, 52-2-736, 53-4-212, 53-4-601, 53-4-611, and 53-4-612, MCA

37.95.106 DAY CARE FACILITIES, REGISTRATION OR LICENSING APPLICATION (1) Any individual may apply for a registration certificate to operate a family day care home or group day care home. Any individual, agency, or group may apply for a license to operate a day care center, or may apply for a registration certificate to operate a family day care home or a group day care home. However, an applicant who has had a previous day care application denied or who has had a day care license or registration certificate revoked or suspended may not reapply for licensure or registration within one year of the denial or revocation. If the suspension or revocation is contested and upheld after a fair hearing, the reapplication may not be made until one year after the date of the decision of the hearing officer. Applications may be obtained from the Department of Public Health and Human Services, Quality Assurance Division, Licensure Bureau, P.O. Box 202953, 2401 Colonial Drive, Helena, MT 59620-2953.

(2) Refer to 52-2-722, MCA for Applications for a license or registration certificate by Indians residing on Indian reservations must follow the requirements of 52-2-722, MCA.

(3) Before a regular one year license without provisions

or restrictions may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) an annual approved inspection report from the state fire marshal or the fire marshal's official designee indicating the fire safety rules have been met;

(b) an annual approved inspection report from public health authorities certifying the satisfactory completion of training or a certificate of approval following inspection by local health authorities in accordance with ARM 37.95.128, 37.95.139, 37.95.140, and 37.95.205 through 37.95.227;

(c) proof of current fire and liability insurance coverage for the day care center;

(d) a schedule of daily activities;

(e) a sample weekly menu;

(f) a DPHHS personal statement of health for licensure form for each caregiver, aide, or volunteer who has direct contact with the children in care;

(g) a criminal background and child and adult protective services check on the provider or staff, including caregivers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(h) list of current staff with ages, addresses, and telephone numbers;

(i) a written fire and emergency evacuation plan for all buildings used for child care services. For license renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and

(j) such other information which may be requested by the department to determine compliance with the licensing requirements.

(4) Before a regular one year registration certificate may be granted, the following shall be submitted by the applicant at the time of application and annually thereafter:

(a) a DPHHS personal statement of health form for each caregiver, aide, or volunteer who has direct contact with the children in care;

(b) proof of current fire and liability insurance coverage for the provision of day care in the home;

(c) a criminal background and child and adult protective services check on the provider or staff, including caregivers, aides, volunteers, kitchen and custodial staff, and persons over age 18 residing in the day care facility prior to any services being provided by an individual covered by this requirement;

(d) a written fire and emergency evacuation plan. For registration certificate renewal there must also be documentation of eight annual emergency evacuation practices, including when each drill took place and how long it took to evacuate everyone from the facility; and

(e) any such other information which may be requested by the department.

(5) Applications for renewal shall be made by the provider



at least 30 days prior to expiration of the license or registration certificate.

(6) A day care facility may not provide care for more than the number of children permitted at any one time by its day care license or registration certificate.

(7) Any individual, group, or other agency may request that the department determine whether a facility should be licensed or registered according to law. Referral may be either in writing or by telephone.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-722, 52-2-723, and 52-2-731, MCA

37.95.108 DAY CARE FACILITIES, REGISTRATION AND LICENSING PROCEDURES (1) The department may investigate and inspect the conditions and qualifications of any day care facility or any person seeking or holding a license or registration.

(2) A family day care home or group day care home must be registered. A day care center must be licensed.

(3) Licensing, registration, and inspection of family day care homes, group day care homes, and centers are the responsibility of the department with the exception of the required local health authority and state fire marshal inspections. Licensing and issuing certificates of registration are delegated to the supervisor of the day care licensing program.

(4) A Registrant or licensee shall not discriminate in child admissions or employment of staff on the basis of race, sex, religion, creed, color, national origin, or disability. Any determination of discrimination will be made by the Montana human rights commission.

(5) Within 30 days of receipt of the signed and completed application forms, the department will evaluate the application for registration or licensure based upon the requirements found in these rules.

(a) A prospective family day care home or group day care home that meets all requirements as evidenced by the application shall be issued a registration certificate. The registration certificate may be provisional, restricted, or regular.

(b) A prospective day care center will be visited and the program and facility inspected by a licensing worker within 30 days of receipt of the completed application. If the applicant meets the requirements for licensure the department will issue a license to the applicant. The license may be either provisional or regular.

(6) A provisional registration certificate or license may be issued for a period of up to three months when the day care facility does not meet all of the requirements if the facility is attempting to comply. A second three month provisional certificate or license may be issued in special circumstances, at the discretion of the program supervisor, the total length of time of issuance not to exceed six months.

(a) A plan for full compliance with requirements for registration or licensure must be submitted by the day care

facility to the department before issuance of a provisional certificate or license.

(b) Written notification of the granting of a provisional certificate or license by the department must be made to the licensee, or registrant specifying the reason, duration, and conditions for continuing or terminating the provisional certificate or license.

(c) The department may not issue a provisional license to any day care center which has not been approved by the state fire marshal and the public health authorities.

(d) The department may not issue a provisional certificate or license to any day care facility which does not have current public liability insurance and fire insurance.

(7) Regular registration certificates and licenses are issued from the department's quality assurance division licensure bureau for periods up to three years.

(a) A three year license or registration may be offered to any provider who has not received a notice of deficiency during a current on site inspection.

(b) A two year license/registration may be offered to a provider who has five or fewer deficiencies in areas of the rules that the department determines do not significantly affect or threaten the health and safety of any child attending the facility.

(c) A provider who has been in operation less than one year is not eligible for an extended license/registration.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, 52-2-732, and 52-2-733, MCA

37.95.121 SAFETY REQUIREMENTS (1) Cleaning materials, flammable liquids, detergents, aerosol cans, and other poisonous and toxic materials must be kept in their original containers and in a place inaccessible to children. They must be used in such a way that will not contaminate play surfaces, food, food preparation areas, or constitute a hazard to the children.

~~(2) All medications must be kept in their original containers, labeled with the original prescription label in a place inaccessible to children.~~

~~(3)~~ (2) No extension cord will be used as permanent wiring. All appliances, lamp cords, and exposed light sockets must be suitably protected to prevent electrocution.

~~(4)~~ (3) Any pet or animal, present at the ~~home~~ facility, indoors or outdoors, must be in good health, show no evidence of carrying disease, and be a friendly companion of the children. The provider is responsible for maintaining the animal's vaccinations and vaccination records. These records must be made available to the department upon request. The provider must make reasonable efforts to keep stray animals off the premises.

~~(5)~~ (4) Guns must be kept in locked storage. Ammunition must be kept in locked storage separate from the gun.

~~(6)~~ (5) The indoor and outdoor play areas must be clean,

reasonably neat, and free from accumulation of dirt, rubbish, or other health hazards.

~~(7)~~ (6) Any outdoor play area must be maintained free from hazards such as wells, machinery, and animal waste. If any part of the play area is adjacent to a busy roadway, drainage or irrigation ditch, stream, large holes, or other hazardous areas, the play area must be enclosed with a fence in good repair that is at least four feet high without any holes or spaces greater than four inches in diameter or natural barriers to restrict children from these areas.

(a) Outdoor play areas shall be designed so that all parts are always visible and easily supervised by staff.

~~(8)~~ (7) Toys, play equipment, and any other equipment used by the children must be of substantial construction and free from rough edges, sharp corners, splinters, unguarded ladders on slides, and must be kept in good repair and well maintained.

~~(9)~~ (8) Toys and objects with a diameter of less than one inch (2.5 centimeters), objects with removable parts that have a diameter of less than one inch (2.5 centimeters), plastic bags, styrofoam objects, and balloons must not be accessible to children who are still placing objects in their mouths.

~~(10)~~ (9) Outdoor equipment, such as climbing apparatus, slides, and swings, must be anchored firmly, and placed in a safe location according to manufacturer's instructions. Recommended ground covers under these items include sand, fine gravel, or woodchips with a depth of the ground cover being at least six inches.

~~(11)~~ (10) Trampolines are prohibited for use by children in care. Trampolines on facility premises must be inaccessible to children in care.

~~(12)~~ (11) The emergency Montana poison control center poison control number, (1-800-524-5042), 1 (800) 222-1222 must be posted at all telephone locations at the day care facility.

~~(13)~~ (12) Use of waterbeds, water mattresses, gel pads, or sheepskin covers for children's sleeping surface is prohibited.

~~(14)~~ (13) In an emergency, all occupants must be able to escape from the facility, whether a home or building, in a safe and timely manner.

(a) All facilities must have two accessible exits on each level. ~~that are unlocked when children are in care and are easily operable from the inside with a single action.~~ The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions. ~~Deadbolt locks that can be opened from the inside only with a key are prohibited.~~

(b) If the day care provider chooses to lock the facility door to prevent unauthorized access to the facility or to prevent a child from eloping, the facility shall have no lock or fastening device which prevents free escape from the interior.

(c) The locking device must not require a key, a tool, or special knowledge or effort to open the door from the inside.

(d) The locked door must be easily opened with one motion from the inside of the facility.

(e) Installation of locking devices may not prohibit access by parents. A facility may not utilize locking devices in a manner to prevent unannounced access by authorized individuals, including parents. If a lock is used, the provider must make adequate provision to allow authorized persons unannounced access to the facility and must provide authorized personnel including parents with information on how to gain access.

~~(b)~~ (f) Exit doors, windows, and their opening hardware must be maintained in good repair at all times.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, 52-2-734, and 52-2-735, MCA

37.95.132 TRANSPORTATION (1) The provider shall obtain written consent from the parent~~(s)~~ for any transportation provided.

(2) The operator of the vehicle shall be at least 18 years of age and possess a valid Montana driver's license.

(a) In day care facilities providing care for school aged children, persons responsible for transportation of children must also possess current CPR and first aid certifications.

(b) Children under four years of age may not be transported in a vehicle which does not provide age appropriate safety restraints or in a vehicle which cannot accommodate a car seat or a booster seat in a manner that conforms with national highway transportation safety administration recommendations.

(3) The passenger doors on the vehicle must be locked whenever the vehicle is in motion.

(4) With the exception of public transportation ~~or rented or leased buses which are~~ that is not required by law to be equipped with safety restraints, no vehicle shall begin moving until all children are seated and secured in age and weight appropriate safety restraints, which must remain fastened at all times the vehicle is in motion. Each child shall have his ~~or her own~~ safety restraint. Children shall not share a safety seat or a safety restraint.

(5) Children shall never be left unattended in a vehicle.

(6) The back of pickup trucks must not be used to transport children.

(7) Facilities providing transportation for children under ~~four years~~ six years of age ~~or 40 pounds~~ or children six years of age but weighing less than 60 pounds shall comply with the following requirements:

(a) all vehicles shall be equipped with children's car seats or booster seats that meet federal department of transportation recommendations ~~standards~~ for the age and weight of the child being transported;

(b) car seats or booster seats shall be fastened securely to the seat or to the floor of the vehicle. Children shall be secured with safety belts which are secured within the vehicle according to factory assembly;

(c) there shall be no more than one child in each car

seat;

(d) there shall be one adult in addition to the driver for each four infants being transported; and

(e) an adult shall accompany each child to and from the vehicle to the child's home or the home authorized by the parents to receive the child.

(8) No child shall be left unattended in a vehicle.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-733, MCA

37.95.139 DAY CARE FACILITIES, HEALTH CARE REQUIREMENTS

(1) The parent(s) of each child admitted to the day care facility shall provide the name of the physician or health care facility the parent wishes to have called in case of an emergency.

(2) If, while in care, a child becomes ill or is suspected of having a communicable disease reportable to the health department while in care, the parent shall be notified by the provider. The parent is responsible for arranging to have the child taken home.

~~(3) The department hereby adopts and incorporates by reference ARM 37.114.1010, which sets standards for tuberculin testing of those working in day care facilities, and treatment and monitoring of positive cases among them. A copy of ARM 37.114.1010 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, P.O. Box 202951, Helena, MT 59620-2951.~~

(4) (3) The director, owner, manager, or person in charge of the day care facility must designate a staff member to check daily the health status of each child immediately upon that child's entry into the day care facility, and to exclude any child showing symptoms of illness, under the following guidelines:

(a) Children must be without fever of 101°F or greater for 24 hours before they return to the day care facility, except that children with immunization-related fevers need not be excluded if they are able to participate in the routine of the day care facility.

(b) Children must be without vomiting and diarrhea for 24 hours before they return to the day care facility. Vomiting includes two or more episodes in the previous 24 hours. Diarrhea is defined as an increased number of stools, increased water in the stool, and/or decreased form to the stool that cannot be contained by a diaper or clothing;

(c) Children with any of the bacterial infections listed below must be treated with antibiotics for 24 hours before they return to the day care center:

(i) strep throat;

(ii) scarlet fever;

(iii) impetigo;

(iv) bacterial conjunctivitis (pinkeye); and

(v) skin infections such as draining burn, infected wounds, or hangnails;

(d) Generalized rashes, including those covering multiple parts of the body, must be evaluated by a health care provider to determine their cause before the child can return to the day care facility;

(e) Children with chickenpox may not be admitted to the day care facility until their sores dry up, which usually takes five to seven days. Day care providers must not purposefully expose susceptible children to chickenpox, even with the permission of the susceptible child's parents;

(f) Children who are jaundiced must be excluded until a health care provider evaluates the cause and authorizes the child to return to the day care facility;

(g) Children with symptoms of severe illness, such as uncontrolled coughing, breathing difficulty or wheezing, stiff neck, irritability, poor food or fluid intake, or a seizure, must be evaluated by a health care provider before they may return to the day care facility;

(h) A child need not be excluded for a discharge from the nose which is not accompanied by a fever.

~~(5)~~ (4) If a child develops symptoms of illness while at the day care facility and after the parent or guardian has left, the day care facility must do the following:

(a) isolate the child immediately from other children in a room or area segregated for that purpose;

(b) contact and inform the parent or guardian as soon as possible about the illness and request the parent or guardian to pick up the child;

(c) report each case of suspected communicable disease the same day by telephone to the local health authority, or as soon as possible thereafter if no contact can be made the same day.

~~(6)~~ (5) When a child is absent, the day care provider shall obtain the reasons so the interest of the other children may be properly protected. If a reportable communicable disease is suspected, the provider shall inform a health officer. No child shall be re-admitted after an absence until the reason for the absence is known and there is assurance that the child's return will not harm that child or the other children. Disease charts that identify the reportable diseases are available from the department.

~~(7)~~ (6) The day care facility may readmit a child excluded for illness whenever, in its discretion:

(a) the child either shows no symptoms of illness;

(b) the child has been free of fever, vomiting, or diarrhea for 24 hours; or

(c) the child has been on antibiotics for at least 24 hours for bacterial infections.

~~(8)~~ (7) The parent or guardian may also provide the day care facility with a signed certification of health from a licensed physician, except that the following restrictions must be followed:

(a) If a child is excluded for shigellosis or salmonella, the child may not be re-admitted until the child has no diarrhea or fever, the child's parent or guardian produces documentation that two stools, taken at least 24 hours apart, are negative for

shigellosis or salmonella, and the local health authority has given written approval for the child to be readmitted to the day care facility;

(b) If a child is excluded for hepatitis A virus infection, the child shall remain excluded until either one week after onset of illness or jaundice, if the symptoms are mild, or until immune globulin has been administered to appropriate children and staff in the day care facility as directed by the local health authority.

~~(9) Good health habits, such as washing hands, must be taught during everyday activities.~~

~~(10) Every employee, volunteer, or resident at a day care facility must:~~

~~(b) be excluded from the day care facility if the person has a communicable disease, a sore throat or cold that is accompanied by a fever of 101° or greater, or if the person exhibits any of the symptoms outlined in (4) for which a child would be excluded;~~

~~(c) wash their hands and exposed portions of their arms with a cleaning compound in a sink by vigorously rubbing together the surfaces of their lathered hands and arms for at least 20 seconds and thoroughly rinsing with clear water, paying particular attention to the areas underneath the fingernails and between the fingers, at the following times:~~

~~(i) after touching bare human body parts other than clean hands and clean exposed portions of arms;~~

~~(ii) after using the toilet;~~

~~(iii) after every diapering;~~

~~(iv) after coughing, sneezing, or using a handkerchief or disposable tissue;~~

~~(v) immediately before engaging in food preparation and before feeding any child;~~

~~(vi) during food preparation as often as necessary to remove soil and contamination and to prevent cross contamination when changing tasks; and~~

~~(vii) after engaging in other activities that contaminate the hands; and~~

~~(d) provide documentation of complete measles, mumps, and rubella immunizations and a tetanus and diphtheria booster within the 10 years prior to commencing work, volunteering, or residing at the day care facility.~~

~~(11) Each provider shall develop policies for first aid. These policies must include: directions for calling parents or someone else designated as responsible for the child when a child is sick or injured. The provider shall immediately call the poison control number (1-800-525-5042) when a child is suspected of having been poisoned.~~

~~(12) A first aid kit must be kept on site at all times and contain at least the following:~~

~~(a) unexpired syrup of ipecac (one ounce bottle) or activated charcoal;~~

~~(i) these substances may only be administered upon directive from the poison control center of the local emergency service program (i.e., 9-1-1 operator, local hospital, or~~

physician);

- ~~(b) sterile, absorbent bandages;~~
- ~~(c) a synthetic ice or gel pack~~
- ~~(d) tape and a variety of band-aids;~~
- ~~(e) tweezers and scissors;~~
- ~~(f) the poison control number (1-800-525-5042); and~~
- ~~(g) disposable single use gloves;~~

~~(12) All children of an appropriate age shall be taught to use and flush the toilet, and to wash their hands after using the toilet, and before eating.~~

~~(16) A portable first aid kit containing at least the items listed in (12) above must accompany staff and children on trips away from the facility.~~

~~(17) The provider shall submit a report to the appropriate local office of the department within 24 hours after the occurrence of an accident causing injury to a child which resulted in the child being hospitalized, requiring ambulance transport or intervention, or physician treatment, or any fire in the facility when the services of the fire department were required. A copy of the report shall be provided to the parents of the child(ren) involved, and a copy retained on file at the day care facility.~~

~~(18) A notation of all injuries must be made on the child's medical record including the date, time of day, nature of the injury, treatment, and whether the parent was notified.~~

AUTH: Sec. 52-2-704 and 52-2-735, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

37.95.140 IMMUNIZATION (1) Before a child under the age of five may attend a Montana day care facility, that facility must be provided with the documentation required by (4) ~~below~~ that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophilus influenza type B, unless the child qualifies for conditional attendance in accordance with ~~(8)~~ (9) ~~below~~:

<u>Age at Entry</u>	<u>Number of Doses-Vaccine Type</u>
under 2 months old	no vaccinations required
by 3 months of age	1 dose of polio vaccine 1 dose of DTP vaccine 1 dose of Hib vaccine
by 5 months of age	2 doses of polio vaccine 2 doses of DTP vaccine 2 doses of Hib vaccine
by 7 months of age	2 doses of polio vaccine 3 doses of DTP vaccine *2 or 3 doses of Hib vaccine



by 16 months of age	2 doses of polio vaccine 3 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age
by 19 months of age	<u>1 dose of varicella vaccine</u> 3 doses of polio vaccine 4 doses of DTP vaccine 1 dose of MMR vaccine administered no earlier than 12 months of age *1 dose of Hib vaccine given after 12 or 15 months of age

(\*) varies depending on vaccine type used.

(2) If the child is at least 12 months old but not less than 60 months of age and has not received any Hib vaccine, the child must receive a dose prior to entry.

(3) DT vaccine administered to a child less than seven years of age is acceptable for purposes of this rule only if accompanied by a medical exemption meeting the requirements of ARM 37.114.715 that exempts the child from pertussis vaccination.

(4) Before a child between the ages of five and 12 may attend a day care facility providing care to school aged children, that facility must be provided with documentation required by (5) that the child has been immunized as required for the child's age group against measles, rubella, mumps, poliomyelitis, diphtheria, pertussis (whooping cough), tetanus, and Haemophiles influenza type B, unless the child qualifies for conditional attendance in accordance with (9).

<u>Vaccine</u>	<u>Dosages Required by Age</u>
<u>Polio</u>	<u>Each child must receive at least three doses of polio vaccine, one of which is administered after age four.</u>
<u>DTP or DTaP</u>	<u>Each child must receive at least four doses of DTP or DTaP (diphtheria, tetanus and pertussis) vaccines by age four and one dose of DTaP after age four but before age seven, unless a licensed health care provider has issued a medical exemption for the pertussis portion of the DTP or DTaP vaccine. If a medical exemption has been issued for pertussis, the child must receive at least four doses of DT vaccine or a combination of four doses of DT, DTP, and DTaP vaccines before age four and one dose of the DT vaccine after age four but before age seven.</u>

Because neither DTP nor DTaP vaccines are recommended or required for a child older than age seven, a child in the day care age seven or older who has not received the four doses of DTaP or DTP vaccinations described above must receive a Td vaccine (tetanus and diphtheria vaccine intended for persons seven years of age or older) as soon as possible and must then receive sufficient additional Td doses to reach a minimum of three doses of any combination of DTP, DTaP, DT, or Td.

Td

Each child in the day care must receive a Td tetanus diphtheria vaccine intended for children younger than seven years of age booster shot unless the child has had a DTP, DTaP, DT, or Td shot within the previous five years or the child received a Td shot at seven years of age or older.

~~(4)~~ (5) Documentation of immunization status for purposes of this rule consists of a completed Montana certificate of immunization form (HPS-101), including the date of birth, the name of each vaccine provided, and the month, day, and year of each vaccination.

~~(5)~~ (6) In order to continue to attend a day care facility, a child must continue to be immunized on the schedule described in (1) ~~above~~ and must be immediately excluded from attendance in the day care facility if the child is not vaccinated on that schedule with all of the required vaccines, or does not have on file at the day care facility a record of medical exemption or a conditional enrollment form which indicates that no vaccine dose is past due.

~~(6)~~ (7) Hib vaccine is not required or recommended for children five years of age and older.

~~(7)~~ (8) Doses of MMR vaccine, to be acceptable under this rule, must be given no earlier than 12 months of age and a child who received a dose prior to 12 months of age must be revaccinated before attending a day care facility.

~~(8)~~ (9) A child may initially conditionally attend a day care facility if:

(a) the child has received at least one dose of each of the vaccines required for the child's age;

(b) a form prescribed by the department documenting the child's conditional immunization status is on file at the day care facility and is attached to the department's Montana certificate of immunization (HPS-101); and

(c) the child is not past due for the next required dose (as noted on the conditional enrollment form) of the vaccine in question.

~~(9)~~ (10) If a child in attendance at the day care facility, a resident of the day care facility, or a staff member or volunteer contracts any of the diseases for which this rule

requires immunization, all individuals infected and all persons attending the day care facility who are not completely immunized against the disease in question or who are exempted from immunization must be excluded from the day care facility until the local health authority indicates to the day care facility that the outbreak is over.

~~(10)~~ (11) The day care facility must maintain a written record of immunization status of each enrolled child and each child of a staff member who resides at the day care facility. The facility must make those records available during normal working hours to representatives of the department or the local health authority.

~~(11)~~ (12) A child seeking to attend a day care facility is not required to have any immunizations which are medically contraindicated. A written and signed statement from a physician that an immunization is medically contraindicated will exempt a person from the applicable immunization requirements of this rule.

~~(12)~~ (13) A child under five years of age seeking to attend a day care facility is not required to be immunized against Haemophilus influenza type B if the parent or guardian of the child objects thereto in a signed, written statement indicating that the proposed immunization interferes with the free exercise of the religious beliefs of the person signing the statement.

~~(13)~~ (14) The department hereby adopts and incorporates by reference ARM 37.114.715 which sets the requirements for a medical exemption from vaccination. A copy of ARM 37.114.715 may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division, Food and Consumer Safety Section~~ Public Health and Safety Division, P.O. Box 202951, Helena, MT 59620-2951.

~~(14)~~ The department hereby adopts and incorporates by reference ARM 37.114.708, which contains standards for documentation of the immunization status of persons commencing school attendance. A copy of ARM 37.114.708 may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division, Food and Consumer Safety Section~~, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 52-2-704, and 52-2-735, MCA

IMP: Sec. 52-2-704, and 52-2-735, MCA

37.95.141 RECORDS (1) The facility shall keep a daily attendance record of the children for whom care is provided.

(2) The facility shall have a master list of the name, address, and phone number of all children in their care and their parents.

(3) If medications are administered at the facility, the facility shall maintain a medication administration log.

~~(3)~~ (4) All records of the facility shall be made available to the department upon request.

~~(4)~~ (5) Prior to a child being enrolled or entered into a day care facility, the following information must be on file: ~~on~~

~~forms provided by the department:~~

(a) written information on each child explaining any special needs of the child, including allergies;

(b) a release or authorization of persons allowed to pick up the child;

(c) necessary medical forms, including all medication authorization and administration logs, signed and updated immunization records and the names of emergency contact persons; ~~and~~

(d) an emergency consent form. This form must accompany staff when children are away from the day care site for activities; ~~and~~

(e) a record of each fire drill conducted pursuant to ARM 37.95.706, including who conducted the drill, when the drill took place, how many adults and children were present, the time of day the drill occurred and how long it took to evacuate.

(6) The information supplied in (5) (a) through (d) must be maintained on forms provided by the department and must be signed by the parent or guardian.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-731, 52-2-732, and 52-2-736, MCA

37.95.214 FOOD PREPARATION AND HANDLING (1) The department ~~hereby~~ adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, with exceptions, which sets sanitation and food handling standards for food service establishments. A copy of ARM Title 37, chapter 110, subchapter 2 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) A day care center must comply with all requirements set for food service establishments in ARM Title 37, chapter 110, subchapter 2, with the ~~following exceptions from the rules noted below~~ noted in this rule.

(3) A domestic style dishwasher may only be used if it is equipped with a heating element and the following conditions are met:

(a) The dishwasher:

(i) is capable of washing and sanitizing all dishware, utensils and food service equipment normally used for the preparation and service of a meal in one cycle;

(ii) must have water at a temperature of at least 165°F when it enters the machine, if it uses hot water for sanitization;

(iii) if it uses a heat cycle with a heating element for sanitization, it must be allowed to run through the entire cycle before it is opened;

(b) At least a two-compartment sink is provided as a backup facility in the event the dishwasher becomes inoperable; and

(c) If the two-compartment sink is used, all dishware, utensils, and food service equipment are thoroughly cleaned in the first sink compartment with a hot detergent solution that is

kept clean and at a concentration indicated on the manufacturer's label, and sanitized in the second compartment by immersion in any chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 ppm of available chlorine at a temperature of at least 75°F for one minute, and air-drying before being stored.

(4) ARM 37.110.220 and 37.110.221 do not apply to a day care center. Instead, a day care center must provide lavatories, water closets, and urinals in the ratio of the number of each to the number of individuals using them ~~noted below~~, taking into account children, staff, and volunteers as follows:

<u>Water Closets</u>		<u>Urinals</u>	<u>Lavatories</u>
Male	Female	If over 20 males, may substitute one half the number of toilets required.	1:60
1:20	1:20		
May combine male and female unless fixture requirement exceeds two.			

(5) ARM 37.110.232(2) through (6) do not apply to a day care center. The food preparation area may be used as a family kitchen.

(6) ARM 37.110.238 does not apply to a day care center, i.e., licensure as a food service establishment is not required.

(7) ARM 37.110.239 does not apply to a day care center, since each day care center is already subject to the inspection and training requirements of 53-4-506, MCA.

(8) Food must be obtained from sources that comply with the Montana Food, Drug and Cosmetic Act, Title 50, chapter 31, MCA, and no home canned foods may be used.

(9) Potentially hazardous foods must be maintained at an internal temperature under 45°F or over 140°F. A food (stem) thermometer must be available to measure these temperatures.

(10) Food that has been in family-style service containers, on the table, or in the service area must be disposed of after the meal.

(11) Ground beef must be cooked to a minimum internal temperature of 155°F and have clear juices and a uniform brown color with no pink.

(12) The department ~~hereby~~ adopts and incorporates by reference ARM Title 37, chapter 110, subchapter 2, which sets forth requirements for food service establishments. Copies of these rules may be obtained from the Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

AUTH: Sec. 52-2-704, and 52-2-735, MCA

IMP: Sec. 52-2-704, and 52-2-735, MCA

37.95.215 NUTRITION (1) The department ~~hereby~~ adopts and

incorporates by reference 7 CFR 226.19 and 226.20, containing meal requirements for day care facilities participating in the child and adult care food program of the US department of agriculture, food and nutrition service. A copy of 7 CFR 226.19 and 226.20 may be obtained from the department's nutrition consultant, Department of Public Health and Human Services, ~~Health Policy and Services Division~~ Public Health and Safety Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.

(2) Each day care center must do the following, with the exception noted in (4) ~~below~~:

(a) serve meals and snacks which meet the requirements for meals contained in 7 CFR 226.19 and 226.20, including the following:

(i) Breakfast for children who are between one and 12 years old must include one serving of fruit, vegetable, or 100% fruit or vegetable juice~~7L~~ one serving of enriched bread or bread alternate~~7L~~ and one serving of fluid milk;

(ii) Lunch and supper for children who are between one and 12 years old must include one serving of meat or meat alternate~~7L~~ two vegetables or two fruits or one vegetable and one fruit~~7L~~ one serving of bread or bread alternate~~7L~~ and one serving of fluid milk;

(iii) Snacks for children who are between one and 12 years old must include two of the following four food components: meat or meat alternate, fruit or vegetable or 100% fruit or vegetable juice, bread or bread alternate, or fluid milk;

(iv) Serving sizes must be appropriate to the child's age as outlined in 7 CFR 226.19 and 226.20; and

(v) The specific nutritional requirements for children under one year old as outlined in 7 CFR 226.19 and 226.20 must be followed~~7L~~

(b) serve meals and snacks on, at a minimum, the following schedule to children in attendance:

(i) snacks at mid-morning and mid-afternoon;

(ii) lunch; and

(iii) breakfast, before 9:00 am, or supper if a child is being cared for in the center at the normal time for those meals and has not otherwise received them~~7L~~

(c) ensure that each bottle-fed infant from newborn to one year of age is held upright during bottle feedings until the child is able to hold the bottle, and that bottles are not propped;

(d) for each child with nutritional therapeutic needs, request and carefully follow special dietary instructions, in writing, from either the child's parent or guardian, or a physician or registered dietitian, if the parent/guardian fails to or cannot provide such instructions. Food brought from home for special dietary purposes must be carefully labeled with the child's name;

(e) plan menus at least two weeks in advance, date and post the menus where parents/guardians can see them, and serve meals and snacks in accordance with the posted menus, with the exception that a menu change may be made so long as it is posted

before parents arrive to check in children on the date of service;

(f) provide supervision to children while they eat and assist the children to eat, if necessary;

(g) offer drinking water at regular intervals to infants and toddlers and ensure that drinking water is freely available to all children; and

(h) keep on file at the day care center written menu records and special dietary instructions for infants and children for one year following the date of the meal service.

(3) If a day care center does not participate in the department's child care food program, the center must do the following in addition to meeting the requirements contained in (2) ~~above~~:

(a) obtain guidance materials from the department about child care food program meal requirements and adhere to the recommendations therein; and

(b) within one year after it begins operation, and once annually thereafter, ensure that a registered dietitian evaluates the nutritional adequacy of its meals and their compliance with this rule, and that the dietitian makes a written report, to be retained on file at the day care center, containing the following information, with a copy to the department:

(i) findings and recommendations pertaining to the nutritional adequacy of food served to the children;

(ii) an assessment of management of meals, and any infant or therapeutic diets;

(iii) date of the evaluation; and

(iv) evaluator's signature and dietitian registration number.

(4) If a parent sends food with a child for consumption at the day care center, the center need not provide meals or snacks for the child to the extent that food is provided by the parent for that meal or snack, but is required to do the following:

(a) provide the child with a meal or snack meeting the requirements of (2) ~~above~~ whenever the parent has not provided food for that meal or snack;

(b) post a copy of the meal requirements referred to in (2)(a) ~~above~~ in an area where it will be readily seen by parents; and

(c) at least annually, provide each parent who has ever sent food to the center for consumption by a child a copy of the meal requirements referred to in (2)(a) ~~above~~.

AUTH: Sec. 52-2-704 and 52-2-735, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

~~37.95.225 WATER SUPPLY SYSTEM (1) The department hereby adopts and incorporates by reference ARM 17.38.207, stating maximum microbiological contaminant levels for public water supplies, and the following department publications setting construction, operation, and maintenance standards for springs (surface water) and wells:~~

~~(a) Circular WQB-1 "Montana Department of Health and Environmental Sciences Standards for Water Works," 1992 edition; and~~

~~(b) Circular WQB-3 "Montana Department of Health and Environmental Sciences Standards for Small Water Systems," 1992 edition.~~

~~(c) Copies of ARM 17.38.207 and Circulars WQB-1 and WQB-3 may be obtained from the Department of Public Health and Human Services, Health Policy and Services Division, Food and Consumer Safety Bureau, P.O. Box 202951, Helena, MT 59620-2951.~~

~~(2) In order to ensure an adequate and potable supply of water, a day care center must either:~~

~~(a) connect to a water supply system meeting the requirements of ARM Title 17, chapter 38, subchapters 2, 3, and 4; or~~

~~(b) if the day care center is not utilized by more than 25 persons daily at least 60 days out of the calendar year, including children, staff, and residents; and an adequate public water supply system is not accessible; utilize a non-public water supply system whose construction and use meet those standards set in the following circulars published by the department:~~

~~(i) Circular WQB-1 "Montana Department of Health and Environmental Sciences Standards for Water Works," 1992 edition; and~~

~~(ii) Circular WQB-3 "Montana Department of Health and Environmental Sciences Standards for Small Water Systems," 1992 edition.~~

~~(3) If a non-public water supply system is used in accordance with (2) (b) above, a day care center must:~~

~~(a) submit a water sample at least quarterly to a laboratory licensed by the department to perform microbiological analysis of water supplies in order to determine that the water does not exceed the maximum microbiological contaminant levels stated in ARM 17.38.207, incorporated by reference in (1) above;~~

~~(b) prior to beginning operation, submit a water sample to a laboratory licensed by the department to perform chemical analysis of water supplies in order to determine that the maximum contaminant levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded.~~

~~(4) A day care center must replace or repair the water supply system serving it whenever the water supply:~~

~~(a) contains microbiological contaminants in excess of the maximum levels contained in ARM 17.38.207, as incorporated by reference in (1) of this rule, or nitrate or nitrite in excess of the maximum contaminant level stated in (3) (b) of this rule; or~~

~~(b) does not have the capacity to provide adequate water for drinking, cooking, personal hygiene, laundry, and water-carried waste disposal.~~

(1) A day care facility shall provide an adequate and potable supply of water:

(a) connected to a public water supply system approved by department of environmental quality; or



(b) if the day care facility utilizes a nonpublic water system source:

(i) the facility must have the water source tested prior to beginning operation and at least once each January and once each June for the total coliform bacteria and fecal coliform or E. Coli bacteria; and

(ii) must provide laboratory tests results to the department as part of the licensing or relicensing process; and

(iii) the day care facility shall take corrective action as needed to ensure the water is safe to drink.

(c) prior to beginning operation, the water must be tested to determine that the maximum contamination levels for nitrate (10 milligrams per liter) and nitrite (1 milligram per liter) are not exceeded; and

(d) documentation of testing must be retained on the premises for 24 months from the date of the test.

(2) The day care facility shall have an adequate and safe sewage system.

(a) For sewage to be safely disposed of, the home must:

(i) connect to a public sewage system approved by the department of environmental quality; or

(ii) if a nonpublic system is used, the day care facility must provide documentation that it has complied with sewage disposal requirements that have been adopted by the local board of health in the jurisdiction in which the day care facility is located; and

(iii) repair or replace the sewage system whenever:

(A) it fails to accept sewage at the rate of application;

(B) seepage of effluent from or ponding of effluent on or around the system occurs;

(C) contamination of a potable water supply or state waters is traced to the system; or

(D) a mechanical failure occurs.

AUTH: Sec. 52-2-704, and 52-2-735, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

37.95.602 DAY CARE CENTERS, PROGRAM REQUIREMENTS (1) The program conducted in a day care center shall be written and shall provide experiences which are responsive to the individual child's pattern of chronological, physical, emotional, social and intellectual growth, and well being. Both active and passive learning experiences shall be ~~conducted~~ provided in consultation with parents under direct adult supervision.

(a) This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the daily program in operation, reviews the written daily program and confirms the program is based upon the criteria below:

(i) the center maintains an ongoing process of parent-staff cooperation in development and modification of program goals;

(ii) the center provides a diversity of experiences during the day for each child with opportunity for quiet and active

experiences, group and individual activities, the exercise of choice, and experience with different types of equipment and materials;

(iii) the center provides age appropriate opportunities during the day when the child can take responsibility, such as getting ready for snacks or meals, getting out or putting away materials, taking care of the child's own clothing, and assisting in planning activities;

(iv) the center provides experiences for children to learn about the world in which they live including opportunities for field trips to places of interest in the community and/or presentations by family and other community people to further expand the exposure and experiences of the children. Caregivers are required to secure a release from parents before children are taken on field trips;

(v) the center provides learning experiences for the children regarding the value of food in relation to growth and development; and

(vi) the center provides opportunities for children to develop language skills and to improve readiness for reading and writing by regularly exposing the children to books, drama, poetry, music, and other forms of expression.

(b) Only (1)(a)(ii) through (iv) are applicable to programs offered by a day care facility exclusively serving school aged children.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

37.95.610 DAY CARE CENTERS, SPACE (1) A day care center must have sufficient indoor and outdoor space for the number and ages of children in care.

(2) Calculation of the required minimum 35 square feet of space per child must exclude food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, shelving, and other storage spaces.

~~(2)~~ (3) In facilities licensed after the effective date of this rule, this requirement shall be deemed to have been satisfied if:

(a) the facility has a minimum of 35 square feet per child of indoor space, each designated area for children's activities contains a minimum of 35 square feet of usable floor space per child that will be in the room at any one time, as calculated in (2). When play and sleep areas for children are in the same room, a minimum of 35 square feet of usable space per child shall be provided except for periods when children are using their rest equipment. During sleep periods, the space shall be sufficient to provide spacing between children using sleep equipment. exclusive of floor area devoted to fixed equipment or support functions such as kitchens, bathrooms, offices, etc. as well as 75 square feet per child of outdoor play space; and

(4) Facilities licensed prior to the effective date of this rule must have a total of 35 square feet of usable interior

floor space in the facility per child, as calculated in (2) per child.

~~(b)~~ (5) ~~The~~ equipment and furniture arrangement must permits unobstructed floor area sufficient to allow vigorous play appropriate for each group of children in care as well as arrangements of any sleeping equipment used which permit easy access to every child and unobstructed exits.

~~(3)~~ (6) Outdoor play areas at the facility must be surrounded by a fence that is at least four feet high and in good repair without any holes or spaces greater than four inches in diameter. Outdoor areas must be designed so that all parts are always visible to allow for direct supervision by child care staff.

~~(4)~~ (7) The center may obtain an exception from the department from the ~~above~~ requirements of this rule for the following reasons:

(a) limited outdoor space is offset by a greater amount of indoor space, such as a gym, permitting an equivalent activity program;

(b) limited indoor space is offset by sheltered outdoor space where climate permits reliance on outdoor space for activities normally conducted indoors; or

(c) limited outdoor or unfenced space is offset by the availability or use of an adjacent school playground, nearby parks, or other safe outdoor play area.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

#### 37.95.611 DAY CARE CENTERS, SUPPORT SERVICES SPACE

(1) A day care center must have sufficient space and appropriate furniture and equipment to provide for support functions and to provide for the reasonable comfort and convenience of staff and parents.

(2) This requirement shall be deemed to have been satisfied if the center has appropriate storage and work areas adjacent to the area of use, to accommodate the following functions if these are conducted on the premises:

(a) administrative office functions, record storage, meeting arrangements for staff, or for parent conference offering privacy of conversation;

(b) food preparation and serving;

(c) custodial services;

(d) laundry;

(e) rest area for staff relief periods; and

(f) storage of program materials and manipulative toys to be used and rotated at different times during the year.

(3) Day care centers providing care only for school aged children must have appropriate size furniture and supplies to fit the needs of children in care. However, a meeting room/conference room may be used if needed as a private/confidential place for communications between parents/staff/children.

(a) A kitchen or clean sanitized food preparation area

must be approved by the local health department.

(b) A convenient, comfortable rest area must be made available for staff who work full days. If no staff area exists, staff must be allowed to leave the facility for a lunch break. The child to staff ratio set in ARM 37.95.620(10) through (11)(a) must be maintained at all times.

(c) Storage for extra equipment/supplies must be in a location easily accessible to staff. Equipment/supplies must be rotated at various times throughout the year to provide for a variety of play and learning experiences. Facilities may arrange to bring supplies that are purchased on a monthly/weekly basis to the site at a time that will not disrupt staff or children at the site.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

37.95.613 DAY CARE CENTERS, MATERIALS AND EQUIPMENT

(1) The amount and variety of materials and equipment available, and their arrangement and use, must be appropriate to the developmental needs of the children in care.

~~(a)~~ This requirement shall be deemed to have been satisfied if the licensing representative has been able to observe the program in operation and approves the selection, arrangement, and use of materials and equipment, based on the following criteria below:

~~(i)~~ (a) Centers shall maintain a housekeeping area, table activities (manipulative toys) area, block building area, library or other quiet area, and a creative arts area. Arrangement of these areas shall be such that quiet and active zones are separated and not conflicting;

~~(ii)~~ (b) ~~The the~~ quantity and quality of materials and equipment shall be sufficient to permit multiple use of the same item by several children so excessive competition and long waits are avoided;

~~(iii)~~ (c) ~~Materials materials~~ and equipment shall be of sufficient quantity and quality to provide for a variety of experiences and appeal to the individual interests of the children in care;

~~(iv)~~ (d) ~~F~~furniture shall be durable, safe, and clean, and be child size or appropriately adapted for children's use;

~~(v)~~ (e) ~~S~~storage shelves shall be provided to children at their level.

(2) Play equipment and materials must include items from each of the following six categories:

(a) dramatic role playing~~7i~~

(b) cognitive development~~7i~~

(c) visual development~~7i~~

(d) auditory development~~7i~~

(e) tactile development~~i~~ and

(f) large-muscle development.

(3) High chairs, when used, must have a wide base and a safety strap.

(4) Each child shall have clean, sanitized and age-

appropriate rest equipment. Seasonably appropriate covering, such as sheets or blankets, for a crib, cot, bed, or mat must be provided. Crib mattresses and other rest equipment shall be waterproof and regularly sanitized.

(5) Each facility must have a working telephone.

(6) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and the emergency montana poison control center ~~poison control center (1-800-525-5042)~~ (1 (800) 222-1222) must be posted by each telephone.

(7) Center programs that exclusively serve school aged children are exempt from (1)(a), (1)(b), and (2). All other provisions of this rule remain applicable to such programs.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

37.95.702 GROUP DAY CARE AND FAMILY DAY CARE HOMES, STAFFING AND ADDITIONAL REQUIREMENTS (1) Except for approved overlap care, there shall be at least two caregivers caring for the children at all times when there are more than six children present at the home.

(2) There shall be no more than six infants in a group day care home or three infants in a family day care home at any time, unless care is provided for infants only.

(3) There shall be sufficient staff so that an adult is always present and supervising all children.

(4) Except for approved overlap care, the provider may not provide care for a child if caring for that child would cause the provider to exceed the number of children the provider is registered to care for on the registration certificate.

~~(5) The provider shall keep a daily attendance record of the children for whom care is provided.~~

~~(6) (5)~~ The provider shall ~~have a~~ maintain an up-to-date master list of with the name, address, and phone number of all children in care and their parents or guardians.

~~(7) All records of the day care home shall be made available to the department upon request.~~

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

37.95.705 GROUP AND FAMILY DAY CARE HOMES, BUILDING REQUIREMENTS (1) The day care home must have a minimum of 35 square feet per child of indoor space, ~~excluding floor area devoted to fixed equipment or support functions such as kitchen, offices, bathrooms, etc.~~ not including food preparation areas of the kitchen, bathrooms, toilets, offices, staff rooms, corridors, hallways, closets, lockers, laundry areas, furnace rooms, cabinets, and storage shelving spaces, as well as 75 square feet per child of outdoor play space.

(2) Every story of the day care facility that is used for day care purposes shall have at least two remotely located means of egress as defined in ARM 37.95.102(42). All areas used for day care purposes must have at least one door for egress that is

~~at least of not less than 34 inches wide and must also have at least a minimum of one other means of egress of at least 24 inches high by 20 inches wide of full clear opening. If windows are used for egress, the total area must be 5.7 square feet of clear opening. that provides a clear opening of at least 20 inches in width, 24 inches in height and 5.7 sq. feet in area. The bottom of the opening shall not be more than 44 inches above the floor. If windows are used for rescue or exiting purposes, the provider shall have a written and feasible evacuation plan. All exits must be unobstructed at all times.~~

~~(3) Remotely located means of egress from each room as required in (2) are not required in buildings protected throughout by an approved, automatic residential sprinkling system, or where the room or space has a door leading directly to the outside of the building.~~

~~(2) (4) Basements, if in use, must be dry, well ventilated, warm and well lighted. If basements are used for day care purposes:~~

~~(a) in facilities newly licensed on or after the effective date of these rules or for which there is a change in ownership on or after the effective date of these rules each designated area for children's activities must have two means of egress that are remote from each other unless:~~

~~(i) the basement areas are protected by an approved, automatic residential sprinkler system; or~~

~~(ii) if the basement area contains an approved sprinkling system, then the area is only required to have direct egress from the basement. If children are sleeping in the basement area, then the requirements of (5) apply.~~

~~(b) the basement must be dry, well ventilated, warm and well lighted.~~

~~(3) (5) All rooms used for napping by children must have at least one operable window which can be readily used for ventilation. If this window is also considered for rescue or exiting, then the window(s) must meet egress requirements and the provider must have a feasible evacuation plan must have at least two means of escape, at least one of which shall be a door or a stairway providing a means of unobstructed travel to the outside of the building at street or ground level to the public way. The second means of escape may be a window which meets the egress requirements of (2).~~

~~(4) (6) Third stories in dwellings must not be used for day care purposes and must be barricaded or locked to prevent entry by children.~~

~~(5) (7) Doorways and stairs must be clear of any obstruction.~~

~~(6) (8) Every closet door must be such that children can open the door from the inside.~~

~~(7) (9) Every bathroom door must be designed to permit the opening of the locked door from the outside in an emergency and the opening device must be readily accessible to the provider.~~

~~(8) (10) Protective receptacle covers must be installed on electrical outlets in all areas occupied by children under five years of age.~~

~~(9)~~ (11) The home and grounds used by children must be maintained to ensure the following:

- (a) the building is in good repair;
- (b) the floors, walls, ceilings, furnishings, and other equipment are reasonably clean;
- (c) the building and grounds are reasonably free of insects, rodents and other vermin; and
- (d) ~~that~~ the children attending the facility shall not be exposed to paint containing lead in excess of .06%.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, and 52-2-731, MCA

37.95.706 GROUP AND FAMILY DAY CARE HOMES, FIRE SAFETY REQUIREMENTS (1) In an emergency, all occupants of the day care facility must be able to escape from the home or building in a safe and timely manner.

~~(a) the ground or main level must have two accessible exits easily opened from the inside with a single action. Deadbolt locks that can be opened from the inside only with a key are prohibited. The two exits must be far enough apart from one another to avoid having them both blocked by fire and smoke. Aisle ways and corridors leading to the exits must be kept clear of obstructions.~~

~~(2) Exit doors, windows and their opening hardware must be maintained in good working order at all times.~~

~~(3) (2)~~ A fire extinguisher must be easily accessible on each floor level. The minimum level of extinguisher classification is 2A10BC. Fire extinguishers shall be mounted ~~located~~ near outside exit doors.

~~(4) (3)~~ All day care facilities must have operating UL smoke detecting devices installed throughout the facility on each floor of the facility, installed in accordance with the manufacturer's specifications. Smoke detectors must be installed in front of the doors to stairways and in corridors of all floors occupied by the day care. Smoke detectors must be installed in any room in which children sleep. If individual battery-operated smoke detectors are used, the following maintenance is required: All day care facilities must have operating UL smoke detecting devices installed throughout the facility in accordance with the manufacturer's specifications. If individual battery-operated smoke detectors are used, the following maintenance is required:

(a) smoke detectors must be tested at least once a month to ensure that they are operating correctly and have new operating batteries installed at least once each calendar year; and

(b) the placement and number of detectors in a home or building must be adequate to awaken all sleeping occupants.

~~(5) (4)~~ All wood burning stoves must meet building codes for the installation and use of such stoves. If used during the hours of care, the stove must be provided with a protective enclosure.

~~(6) (5)~~ No portable electric or unvented fuel-fired

heating devices are allowed. All radiators, if too hot to touch, must be provided with a protective enclosure.

~~(7)~~ (6) A minimum of eight fire drills must be conducted annually, at least one month apart as weather permits. Records, including who conducted the drill, when the drill took place, how many adults and children were present during the drill, the time of day the drill occurred, and how long it took to evacuate everyone must be maintained at the facility and made available for review.

AUTH: Sec. 52-2-704, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-734, MCA

37.95.708 GROUP AND FAMILY DAY CARE HOMES, OTHER FACILITY REQUIREMENTS (1) Each home must have hot and cold running water with at least one toilet provided with toilet paper and one sink provided with soap and paper towels.

(2) Each facility must have a working telephone. Those facilities which have an unlisted number must make this number available to the parents and emergency contact persons of the children in care, and the appropriate regional or local offices of the department.

(3) Telephone numbers of the parents, the hospital, police department, fire department, ambulance, and ~~poison control center~~ the emergency montana poison control center (1-800-525-5042) (1 (800) 222-1222) must be posted by each telephone.

(4) No provider shall actively operate another business in the facility during the time the children are present for day care services.

(5) When a municipal water supply system is not available, a private system may be developed and used as approved by the state or local health department. Testing must be conducted at least annually by a certified lab to ensure that the water supply remains safe and the licensee or registrant shall provide laboratory results to the department during the licensing or relicensing process. Sanitary drinking facilities shall be provided by means of disposable single-use cups, fountains of approved design, or separate, labeled or colored glasses for each child.

(6) An adequate and safe sewage disposal system shall be provided and used as approved by the state or local health department.

(7) Garbage cans shall be provided in sufficient number and capacity to store all refuse between collections and shall be corrosion resistant, fly tight, watertight, and rodent proof with lids. Kitchen garbage containers must have lids or be stored in an enclosed area.

(8) All food shall be from an approved source and shall be transported, stored, covered, prepared, and served in a sanitary manner to prevent contamination.

(a) Milk and other dairy products shall be pasteurized.

(b) Use of home canned foods other than jams, jellies, and fruits is prohibited.

(c) Perishable foods shall be kept at temperatures above



140°F or below 45°F.

(d) No persons with boils, infected wounds, respiratory diseases, or other communicable diseases shall handle food or food utensils.

(e) All food utensils shall be properly washed and rinsed after each usage. A domestic style dishwasher may be used if equipped with a heating element.

(f) Single service utensils may only be used once.

(9) Folding of clean laundry must not take place on the same work surface used for sorting dirty laundry. Bedding shall be laundered when necessary and aired out periodically to prevent mildew.

AUTH: Sec. 52-2-704, and 52-2-735, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

37.95.1005 CHILD CARE FACILITIES CARING FOR INFANTS, SLEEPING (1) There shall be adequate opportunities for sleep periods during the day suited to the infants' individual needs.

(2) Unless the child's parent has provided medical documentation from a health care provider ordering otherwise, infants shall be placed on their back and on a firm surface to reduce the risk of sudden infant death syndrome (SIDS).

(3) Each infant shall be provided with a crib or play pen for sleeping until, at the discretion of the parent and provider, they are safe on a cot or mat.

(a) Infants shall not be routinely allowed to sleep in a car seat, infant swing, or other infant apparatus.

(b) Cot or mat surfaces may be of plastic or canvas or other material which can be cleaned with detergent solution and allowed to air dry.

(4) Cribs shall be made of durable, cleanable, nontoxic material, and have secure latching devices. Cribs shall have no more than 2 and 3/8 inches of space between the vertical slats. Mattresses shall fit snugly to prevent the infant from being caught between the mattress and crib siderail. Crib mattresses shall be waterproof and easily sanitized. Cribs, cots, or mats shall be thoroughly cleansed before assignment to another infant.

(5) Cribs, cots, or mats shall be spaced to allow for easy access to each child, adequate ventilation, and easy exit. Aisles between cribs or cots shall be kept free of obstructions while cribs or cots are occupied. No child or infant shall be placed in a stackable crib.

(6) All pillows, quilts, comforters, sheepskins, bumper pads, stuffed toys, and other soft products shall be removed from the crib and play pen. If blankets are used, the infant's head shall remain uncovered during sleep.

(7) Each infant shall have been provided by the parent with a clean washable blanket or other suitable covering for his/her use while sleeping. Each infant's bedding shall be stored separate from bedding used by other infants.

(8) All cries of infants shall be investigated.

AUTH: Sec. 52-2-704, and 52-2-735, MCA

IMP: Sec. 52-2-704, 52-2-723, 52-2-731, and 52-2-735, MCA

4. The rules 37.95.109, 37.95.618, 37.95.620, 37.95.701, and 37.95.907 as proposed to be repealed are on pages 37-23291, 37-23437, 37-23438, 37-23491, 37-23492, and 37-23536 of the Administrative Rules of Montana.

AUTH: Sec. 53-4-503, MCA

IMP: Sec. 53-4-504, MCA

5. The proposed new rules and amendments to current rules are reasonable and necessary for the following reasons:

Rule I Day Care Facilities: License or Registration Renewal Procedures

This entire rule is new rule language. The rule defines and clarifies the program's license or registration renewal process. The process has previously been defined through department policy, but due to the Vainio Supreme Court decision, this information is now being implemented through rule.

The department also decided to put this process into rule, because the consequences for late or incomplete renewal applications can ultimately have financial impact to the provider. For example, a lapsed renewal can affect a provider's ability to receive state payment for families participating in the Best Beginnings Program and can affect the provider's ability to receive subsidies through the Child and Adult Food Program. Placing the requirements in the rule makes the information readily available to providers so they can verify their application is complete.

Rules II, VII, XI, XIV, XV, XXI, XXIII, XXV, XXVI, and XXIX

These rules are not new requirements, but are rules made up of language that was contained within several other areas throughout the existing rules. The department decided to put the language into individual rules with separate headings to make it easier for providers to locate the information. These newly split out rules address the following topics: staff records; the requirement of cooperating with the department and with department assessment; record keeping; licenses being required for each facility; the need to post the license or registration certificate; notification of facility address changes; ensuring that persons in the day care pose no threat to the children; and the need to supervise children at all times.

Rule III Day Care Facilities: Mandated Reporting of Suspected Child Abuse and Neglect

This rule establishes the time frame in which day care

providers, who are mandatory reporters must report suspected child abuse or neglect to the department. Child care providers are often the "first line of defense" and may be one of the first to observe physical indicators of abuse. Because of the relationship with the provider, the provider may be the one person the child is comfortable disclosing abuse to. This information must be promptly reported to the department in order to ensure that children are protected, that appropriate investigation is begun and, when necessary, appropriate services are provided to the family and the child.

#### Rule IV Day Care Centers: Confidentiality Requirements

This new rule is necessary to ensure that personal information regarding a day care child, or the family or a day care child is not indiscriminately shared with others. The rule describes the responsibility of the provider and all caregivers to keep information regarding a day care child or the child's family confidential.

#### Rule V Group and Family Day Care Homes: Provider Responsibilities and Qualifications

This rule describes the general requirements for day care providers, caregivers and others in a direct care capacity, and is necessary to ensure that providers, caregivers and others are appropriate persons to provide care to children and do not pose a risk of harm to the children.

#### Rule VI Day Care Facilities: Criminal Background Checks

This rule is not a new rule, but one of the existing rules which was broken out and given its own heading. The rule is necessary to emphasize the process, the expectation of providers and the importance of conducting criminal background checks. This rule outlines the process and provides for an exception process for applicants who cannot be successfully fingerprinted or for whom the department of justice is unable to successfully read fingerprint cards. The rule defines the process to be followed when assessing applicants who have lived in states other than Montana and provides for an annual name based check for renewal of the care registration or license. The rule also establishes the process to obtain a child protective services check.

#### Rule VIII Day Care Facilities: Required Annual Training

Since 2000, day care providers have been subject to annual training requirements. The language in this rule is not new language, but is broken out to assist providers in locating the information. The rule clarifies the department requirements for ongoing training requirements and further clarifies that the hours of training are to be attended during the license/registrants license year.

Rule IX Day Care Facilities: Negative Licensing Action

This rule is not a new rule, but one of the existing rules which was broken out and given its own heading. The rule is being separated out to emphasize the department's authority to take negative licensing actions following written notification to an applicant or licensee when the department has determined that circumstances warrant such action. The rule explains the criteria the department applies under its authority to ensure that applicants or licensees who are appropriate to provide day care services because they or other persons living in their home or in the day care facility pose a threat to children's safety and well being do not become licensed or registered or do not remain licensed or registered.

Rule X Day Care Centers: Child to Staff Ratios

This rule is not new language, but was contained in other areas throughout the rule. The department decided to put the language into one primary area under a separate heading to make it easier for providers to locate the information. The rule defines the ratios for day care centers who provide care to children 0-12 years of age as well as those facilities who provide care exclusively to school aged children. It further defines who can be counted as staff for purposes of determining the staff ratio.

Rule XII Day Care Facilities: License or Registration Not Transferable

This rule is not new language, but was contained in several areas within the existing rules. The department decided to put the language into one primary area under a separate heading to make it easier for providers to locate the information. The department has proposed to add under this new rule that if the operation is discontinued, or a transfer of ownership occurs, the department requires that the exiting licensing certificate be physically returned to the department. This will prevent any misconception on the part of the new owners, or parents concerning the status of the facility license.

Rule XIII Day Care Facilities: Notice of Changes

This rule is necessary to ensure that the department receives prompt notice of changes within the child care program which would affect the terms of the license. Changes such as those listed can affect the overall care children receive.

Rule XVI Day Care Centers: Staffing Qualifications

The changes in qualification for center director are being made for the following reasons. The director of the facility is the team leader of a small business. Both administrative and child development skills are essential for this individual to manage the facility and set appropriate expectations. College level

course work has been shown to have a measurable positive effect on meeting or exceeding the child care standards, whereas the sole "experience" qualifier per se, has not. The director of a center plays a pivotal role in ensuring the day to day smooth functioning of the facility. The department has decided to discontinue the use of the out of date terms referring only to a "facility director" and add language differentiating between an on site director teaching director and an administrative nonteaching director to allow for flexibility in how the facility and staff are managed, but yet maintain the importance of child development and educational leadership. In doing so, Montana will be in line with the National Standard recommendations pertaining to qualifications and managerial skills for day care center directors.

Because of the reasons stated above, the department is proposing to increase the training requirements for center directors. It is the department's position that center directors, because they are the "leaders" of the facilities and are the responsible persons accountable for all program policies, need to have broader education and higher levels of ongoing training. Additionally, many center directors also provide direct in-service training to their staff. As such, it is logical that center directors should maintain a higher number of annual training hours.

Language is being added to clarify the CPR/First Aid training requirement. The existing language of "current course completion" was interpreted by several providers to mean they could take an online CPR course without the benefit of the practical demonstration of the CPR skills. In discussing the issue with the American Red Cross and the American Heart Association, the department understands and supports the importance of providers being tested in the practical applications of CPR skills. Thus this language is added to make it clear that the department is requiring completion of a CPR course that includes the practical and demonstrated application of the skills.

Rule XVII Day Care Facilities: School Aged Care

Due to the nature of school aged child care, the existing center rules are not always appropriate for facilities exclusively serving the children ages 5 through 12. Rather than create a whole new rule which would apply only to SACC programs (and repeat many other of the exact same rules throughout), the department chose to specify the criteria in this manner. The specifications of SACC care are outlined throughout the regulations and categorized accordingly.

Rule XVIII Day Care Facilities: Medication Administration

This rule is being added to strengthen the department's rule on medication administration. The American Academy of Pediatrics

(AAP) and the American Public Health Association (APHA) support these changes in whole. The department's previous rule regarding medication administration was very vague and incomplete which has contributed to medication errors being committed. The new language safeguards children from inappropriate administration of medications - the new language defines what can be given and the proper documentation that must be secured and maintained whenever medication, whether it be prescription or nonprescription is given.

Additionally, caregivers should not administer medications based solely on a parent's verbal request. Before assuming responsibility for administration of medicine, facilities should have written confirmation from the parent and, if necessary, a physician or other medical professional to include clear, accurate instruction and medical confirmation of the child's need for the medication while in the facility.

Rule XIX Day Care Facilities: Storage and Administration of Medication

Much of the language in this rule is not new language, and was contained within another area of the existing rule. Given the department's emphasis on medication administration procedures, and the enactment of Dane's Law, it was decided to update the information and to make this a separate rule under a separate heading. In doing so, it will make it easier for providers to locate the information.

Rule XX Day Care Centers, School Aged Care: Director and Staff Qualifications

Title Change - Care provided for children of school age is no longer referred to as "after school". Because this type of care can be provided before school, before and after kindergarten, after primary grades, and during school breaks, the department is simply updating this rule to refer to the now accepted language of school aged care.

The various changes within this rule are being added at the request of the Montana School's Out Project. This project was comprised of several existing providers of school aged care, staff from various child care resource and referral agencies, elementary and secondary school principals, and other early childhood advocates. The mission of this group has been to increase awareness for the need of quality school aged child care services, of which many day care programs fall into. The need to revisit the regulations governing these programs was a major undertaking as the rules which existed needed to be updated to reflect current national trends and current program structures.

It is critical that caregivers of school aged children be able to demonstrate knowledge about and competence with the social

and emotional needs and development tasks of five to 12 year old children, be able to recognize and appropriately manage difficult behaviors and know how to implement a socially and cognitively enriching program. It is a shared belief between the Montana School's Out Project and other early care and education advocates that persons providing school aged care must possess the background and educational experience as specified in this proposed language in order to achieve these developmental goals for this age of children. The language as proposed is consistent with National Standards associated with school aged care programs.

Further, the Montana School's Out Project requested the department to adopt specification for site directors because many programs are housed at various school locations, but are operated singly by the school district or other community organization. The site coordinator is critical to the safe and proper implementation of the SAC program. All staff of SAC programs must have the appropriate hours of training and must be certified in CPR and first aid as any other child care professional in any other child care environment.

Rule XXI Day Care Centers, School Aged Child Care: Notice of Current Address

It is very important that as facilities change locations, that the department be notified timely of this happening. This rule has been separated out to assist providers in easily locating the information.

Rule XXII Day Care Facilities: Protection of Children from Person Charged with Crime Involving Children, Violence or Drugs

This rule contains existing requirements from ARM 37.97.109, which is being repealed because it is broken out into separate rules with separate headings. The existing rule prohibits any caregiver charged with a crime involving children or violence or any felony drug offense from providing care or being present in the facility pending the outcome of the trial. The new rule also prohibits volunteers, support staff, or other adults residing in the facility or staying in the facility on a regular or frequent basis from providing care or being present in the facility pending the outcome of the trial.

Rule XXIV Day Care Facilities: Requiring Physical, Psychological, Psychiatric, or Chemical Dependency Evaluation

New Rule XXIV provides that the department may require an examination of a staff person, volunteer, or person residing at the facility or regularly or frequently staying at the facility in cases where the department has reasonable belief that the person has engaged in behaviors that may place others at risk.

Rule XXVII Day Care Facilities: Health Habits

Section (8) sets out specific hand washing requirements to meet the standards recently reviewed by the American Academy of Pediatrics and the American Public Health Association. Hand washing is the most important way to reduce the spread of infection.

Rule XXVIII Day Care Facilities: First Aid Requirements

Adds language requiring that a provider adopt and follow first aid policies consistent with American Red Cross recommendations and which establish procedures for dealing with medical emergencies. There has been much controversy regarding Syrup of Ipecac. The American Academy of Pediatrics publicly denounced the use of Ipecac in home first aid kits. However, in discussing the issue with the Regional Poison Control Center in Denver, because of Montana's rural nature and the potential for long transport times, they are recommending that first aid kits contain Ipecac, so long as the substance may only be used under poison control or medical direction.

ARM 37.95.102 Definitions

Several definition sections were renumbered only in order to accommodate the addition of other definitions in alphabetical order.

The department is providing definitions of the following terms to assist providers in understanding the substantive rule provisions: "Aides", "CPR", "Delayed Renewal Application", "Director", "Lapsed Registration/License", "Nonprovider Staff", "Nonprescription Medication", "Nonteaching Director", "Primary Caregiver", "Prescription Medication", "Probationary License", "Remote Means of Egress", "Renewal Registration/License", "School Age Child Care Facility", "Substitute", "Teaching Director", and "Varicella".

The department has made slight grammatical changes in the following definition section and subsection to make them more understandable: (13)(a) and (45).

ARM 37.95.106 Day Care Facilities: Registration or Licensing

The department is removing "Application" from the heading of the existing rule.

The department is adding the proposed language to make the rule consistent with the statute and allow groups or organizations to run a day care program limited to 6 to 12 children.

Section (3) specifies the differences in submission requirements for a program issued a one year license certificate (center) vs. a program who is granted an extended certificate.



Subsection (3)(i) clarifies that all buildings in which child care is provided must have a written fire and emergency evacuation plan.

Section (4) identifies the requirements that apply for a one year regular certificate.

ARM 37.95.108 Day Care Facilities, Registration and Licensing Procedures

Section (7) provides criteria for issuance of a 3 year license or registration certificate, and for a 2-year license or registration, and clarifies that a provider must be in operation at least one year before he can be considered for issuance of an extended license/registration.

ARM 37.95.109 Caregiver Qualifications for All Day Care Facilities

This rule is being repealed because it has been broken out into new rules with separate headings to make the information easier to find or because provisions were redundant with other rule sections.

ARM 37.95.121 Safety Requirements

Section (2) is being stricken because the department is proposing new rules with regard to medication administration. See [RULE XVIII].

Section (3) extends the requirement that an animal be in good health to center based programs. Previous language pertained only to home programs.

Sections (4) through (13) are renumbered.

The proposed change to (11) adds the National Poison Control Center as the number for whom day care providers should call if an accidental poisoning occurs. It is the department's understanding that a person who calls this number will be automatically routed to their respective regional poison control center. By using the National number, day care providers will be connected with the appropriate center whatever that number may be. Providers will only need to know one basic number.

The changes are being proposed to (13)(a) through (d) due to concerns expressed by day care providers involving personal safety. Specifically, providers were worried that by failing to lock their doors, they would be leaving themselves and the children vulnerable to entry by persons who could cause them harm. The original rule was established to (1) allow unobstructed exiting in the event of a fire and (2), to allow unlimited parental access. However, based upon interactions with providers, the department has come to understand the

overriding safety concerns. The language as proposed is the department's attempt to allow providers to feel safe within their own homes while making sure there is a means for exiting - in the event of a fire or other emergent condition - and unlimited means for parents to access their children.

ARM 37.95.132 Transportation

This rule, as amended, will require a provider to have a valid Montana driver's license, rather than a license from any state. It also requires that any person transporting children possess current CPR and first aid certificate since the person providing transportation may be the only adult overseeing the child while being transported. It also provides that providers shall place the child in an age appropriate child restraint seat which meets federal department of transportation recommendations.

The language in (2)(b) is being proposed to bring the rule into compliance with the National Highway Transportation Safety Administration's guidelines for transportation of children.

The changes in section (7) and subsection (7)(a) make the language consistent with 2003 Laws of Montana, Chapter 407, which was passed in 2003.

ARM 37.95.139 Day Care Facilities, Health Care Requirements

The rule strikes requirements pertaining to tuberculosis which the Centers for Disease Control and Prevention no longer recommends since it does not offer any significant degree of safety to public health and adds unnecessary cost to the day care operation.

ARM 37.95.140 Immunization

The Department is proposing the additional language in (1) in order to specify the differences in immunization schedule between children under the age of two and those who are five and older. Section (4) breaks out the schedule for children aged five and older.

Also the department is adding the requirement that children receive the Varicella vaccine by 19 months of age as a condition of continued attendance in day care. According to the American Academy of Pediatrics (AAP), "Varicella is very contagious and can occur in a high proportion of susceptible children in an institutionalized setting. All healthy children one year of age or older who lack a reliable history of varicella should be immunized."

Also according to the AAP, "The majority of cases (approximately 85%) occur among children less than five years of age. The highest age specific incidence of varicella is among children one through four years of age, who account for 39% of all cases.

The age distribution is probably a result of earlier exposure to VZV in preschool and child care settings."

For these reasons, the department proposes to add the requirement that children attending day care be immunized with Varicella by 19 months of age.

Sections (5) through (14) are renumbered only.

This division has had a change in title, and the language in (14) reflects that change. The stricken language deals with a rule that no longer applies.

#### ARM 37.95.141 Records

The proposed language in (3) and (5) specifies that providers maintain records of medication administration and records of fire drills conducted. The additions here are simply added to make sure that proper documentation is secured. Other changes are grammatical.

For ease and consistency, the department has developed appropriate forms for compliance with these areas, which will be required in order to ensure that the same categories of information are consistently gathered.

#### ARM 37.95.214 Food Preparation and Handling and ARM 37.95.215 Nutrition

Changes to these rules are made to update the language with the new division titles, as well as to make grammatical corrections.

#### ARM 37.95.225 Water Supply System

Existing language is being stricken and replaced with new language. This is being done to update the language with the correct DEQ standards and the EPA guidelines for water supply systems.

#### ARM 37.95.602 Day Care Centers, Program Requirements

Most day care programs develop a schedule of activities or implement a curriculum without the direct involvement of parents. Parents are typically informed of activities and curriculum areas, but don't technically "approve" each and every activity. As the department examined this rule, it was felt that while parental consent to activities is critical, supervision of these activities is far more important. Safety and supervision are paramount the proper learning experiences for children.

According to developmental theory, at particular ages it is very important that children be able to guide and plan their own activities. By doing so, children learn to be responsible for

themselves and they learn that they have value and worth in their world.

The requirements of subsections (1)(a)(i), (a)(v), and (b) are not appropriate for and do not apply to programs provided to school aged child care programs. Rather than create an entirely new rule on SACC care -- which would ultimately repeat several of the center regulations -- the department simply decided to specify which regulations in this rule apply and to exempt school aged child programs from others.

ARM 37.95.610 Day Care Centers, Space

Child behavior tends to be more constructive when sufficient space is organized to promote developmentally appropriate skills. Crowding has been shown to be associated with increased risk of developing upper respiratory infections. Also, having sufficient space will reduce the risk of injury from simultaneous activities occurring in limited space. It also allows for proper and timely exiting in the event of a fire or other emergent condition.

The previous language referred to "facility" space issues, rather than identifying space that is useable for activities with the children. The new language focuses on useable space and requires that a facility have 35 square feet of useable space per child as recommended by the American Public Health Association and the American Academy of Pediatrics.

The department is grandfathering existing facilities in under the existing rule provisions for calculating the required space.

Other changes are grammatical.

ARM 37.95.611 Day Care Centers, Support Services Space

This language was suggested by the Montana School's Out Project. It recognizes that SACC programs are often housed in school buildings and are conducted in space which is used by school children during the greater part of the day and that SACC program coordinators must be creative in the use of the individual spaces and the use and storage of program materials and equipment, while also providing appropriate services and equipment for the ages of children being served.

ARM 37.95.613 Day Care Centers, Materials and Equipment

These changes are made for grammatical and formatting correctness or to make the language easier to read.

The language in (6) updates the Poison Control Center number.

Due to the nature of SACC care, all of the rules as specified are not appropriate in SACC settings and (7) exempts SACC programs from those requirements.

ARM 37.95.702 Group Day Care and Family Day Care Homes, Staffing and Additional Requirements

Language is being stricken as redundant and for clarity.

ARM 95.705 Group and Family Day Care Homes, Building Requirements

The language in (1) is being added for clarity. The areas listed, are not appropriate areas for child activity and should therefore not be counted in calculating total space/area for purposes of square footage calculations.

The language proposed in (2) is meant to help define "means of egress" based upon Life Safety Code practices, as well as the practices utilized by fire prevention personnel. This language is necessary in order to have clear access out of the building in the event of fire or other emergent condition.

The language regarding clear opening further defines the minimum measures for windows relied upon as a means of egress and the rule designates the maximum distance the egress window may be from the ground. The previous language was confusing for providers and licensors alike.

Section (3) gives providers alternatives to the "two remote means of egress" based upon uniform fire practices and the Life Safety Code.

Based upon current fire prevention practices, if basements are equipped with sprinkling systems, there is no need to require remotely located means of egress, or to have minimum dimensions required for a window relied upon as a means of egress because the sprinkling system will douse any fire before the fire blocks exit from the area. There are a large number of day care facilities where care is situated in basements. Constructing egress windows or constructing direct openings from the basement area can be costly. The installation of a residential sprinkling system is comparable in cost, but also provides basic fire protection which will reduce the risk of persons being harmed, at the same time it reduces property destruction.

The department is allowing existing facilities to be "grandfathered" in because those facilities have been allowed to operate under the existing rules for several years. Many programs have made modifications (at large financial costs) by constructing either a second door, or by adding an egress window to meet the minimum fire safety practices. However, because exit from basement areas can be extremely difficult, the

department feels that enactment of these rules is necessary for new programs.

Sections (6) through (11) are renumbered only.

ARM 37.95.706 Group and Family Day Care Homes, Fire Safety Requirements

(1)(a) through (2) are stricken and have been clarified in ARM 37.95.705.

Section (2) is renumbered and now requires that fire extinguishers be mounted near exit doors, which is consistent with current fire prevention practices.

Section (3) will require that smoke detectors be installed in front of the doors to stairway, in corridors on all floors of the facility and in rooms in which children sleep to be consistent with current fire prevention practices.

Sections (4) through (5) have been renumbered.

The department desires the records in (6) to be maintained on site at each day care facility. Upon inspection, the department will request the records and review them at that time. It is not necessary to review the documents other than when we are onsite.

ARM 37.95.708 Group and Family Day Care Homes, Other Facility Requirements

This rule is being amended for the same reasons as ARM 37.95.121.

ARM 37.95.907 Family Child Care Homes, Safety Requirements

This entire rule was previously incorporated into ARM 37.95.121 and should have been repealed in the last rule amendment. As such, the department finds this language repetitive and unnecessary and therefore, proposes to repeal it at this time.

ARM 37.95.1005 Child Care Facilities Caring for Infants, Sleeping

According to the National SIDS Resource Center and the Back to Sleep Campaign, the supine (back) position presents the least risk of SIDS. Once infants develop the motor skills to move from their back to their side, or stomach it is safe to put them to sleep on their backs and allow them to adapt to whatever position makes them comfortable. If a child has an illness or a disability that predisposes the child to airway obstruction in the back sleeping position, providers should have a physician's note specifying the need for prone sleeping and any other special arrangements required for that child.

The change to (3) was made for grammatical purposes. According to the National SIDS Resource Center, and the American Academy of Pediatrics, infants allowed to routinely sleep in car seats, infant swings and other apparatus (except for cribs, sleeping beds) are at a higher risk of SIDS. An infant's neck can bend forward potentially causing the baby to suffocate. Children can fall asleep in these apparatus, but should then be moved to an appropriate sleeping surface, such as a crib.

Section (4) prohibits use of stackable cribs, based upon national statistics documenting an increase in serious injuries to infants due to problems with the latching devices on these cribs.

Section (6) prohibits the listed items from being left in any crib or playpen in which an infant sleeps based upon the risk of suffocation. Infants have been found dead on their stomachs with their faces, noses, and mouths covered by soft bedding, such as pillows, quilts, comforters and sheepskins. However, some infants have been found dead with their heads covered by soft bedding even while on their backs. As such, the National SIDS Resource Center, the Back to Sleep Campaign and the AAP recommends that these items be eliminated from all infant sleeping apparatus.

No fiscal impact is expected as a result of these rule changes.

6. Interested persons may submit their data, views or arguments either orally or in writing at the hearing. Written data, views or arguments may also be submitted to Gwen Knight, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 202951, Helena, MT 59620-2951, no later than 5:00 p.m. on January 19, 2006. Data, views or arguments may also be submitted by facsimile to (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The Department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

7. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

Dawn Sliva  
Rule Reviewer

Russ Cater for  
Director, Public Health and  
Human Services

Certified to the Secretary of State December 12, 2005.